

***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 Security and Economic Review Commission**

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I. EXECUTIVE SUMMARY

China's accession to the World Trade Organization at the end of 2001 was and is an historic event and a great experiment. Because China is a huge country, with a very rapidly expanding economic base and an economy which continues to reflect significant state involvement in decisions of resource allocation, there was no certainty at the time of accession that China's economic system would mesh well with the World Trade Organization rules and other trading partners' generally market-oriented economies.

Indeed, in the history of the GATT, and now World Trade Organization, never has a country of such trading importance been admitted with a system that was still so far from conformance with GATT/WTO norms. China has worked hard to make an enormous array of changes to its legal and regulatory system before accession and had much work to do after accession if membership was to present the market opportunities within China that trading partners expected.

It is twenty-seven months since China became a member of the WTO, and it may be possible now to form a better picture of the level of compliance achieved to date and the problems that remain ahead.

First, it must be noted that China has complied with many of its WTO obligations. China has generally implemented in a timely manner tariff reduction commitments, one of the more important obligations assumed by China in joining the WTO. Similarly, China has revised many of its laws and regulations to mirror WTO obligations. Although governments and companies report improvements in China's legal framework supporting intellectual property rights, IPR enforcement lags seriously behind as piracy and counterfeiting remain rampant. China has also

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improved transparency in many aspects though not consistently and not to the level desired or committed to by China.

However, the record of China's first two years of WTO membership demonstrates that many obligations have not been met or have been met but with significant delays. For example, the problems that various parts of US agriculture have faced with China's TRQ administration are one example of China's failure and/or delay in implementing obligations that are important to US exporters. Similarly, China is at least two years in arrears on its commitment to open auto financing and has received significant criticism for its handling of auto and auto parts limits consistent with commitments undertaken, although there are recent positive developments in all these areas. Financial service providers (as well as other service sectors) have found that China is implementing its obligations late, if at all, and with restrictions not encountered in other countries, which effectively reduces the value of the market opening promised by China.

So also, trading rights – which were to have been significantly liberalized by now and to have become universal by the end of 2004 – remain severely limited in many circumstances despite the importance of these commitments to all WTO members during China's accession negotiations. China committed to giving full trading rights to joint-venture enterprises with majority share foreign-investment two years after accession, that is, by December 11, 2003. China, however, failed to meet this deadline and continues to impose conditions such as capitalization requirements, import levels, export levels and prior international trade experience. These types of conditions on trading rights were common before accession but were precisely the types of restrictions that were to have been eliminated as part of China's accession commitments.

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The 2003 China WTO compliance report 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 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).

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

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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 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.

At the same time, China has aggressively worked to undermine the utility of provisions added to its accession protocol which were designed to ensure multilateral supervision of timely compliance or to permit other WTO members to exercise rights to limit imports from China during a transitional period as China makes further modifications to its trading system to become more WTO compliant. Such actions by China do not amount to problems with “compliance” as that term would normally be considered, but they nonetheless significantly undermine the value of the commitments undertaken by China and rights secured by China’s trading partners. Two examples of this action at work may be seen in the Transitional Review Mechanism (or TRM) and the use of special safeguard mechanisms.

Regarding the multilateral supervision and monitoring of China’s implementation of its commitments, Article 18 of China’s protocol of accession to the WTO requires an annual review for eight years and a final review in the 10th year after accession by each standing committee and by the three councils of the WTO (Goods, Services, TRIPS) and by the General Council of

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China's progress in implementing various WTO obligations. Article 18 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 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.

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. 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 goes 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

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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.

Because the Article 18 process is just one of the ways member nations work with China to understand developments in the country and to address problems that may arise, it is hard to characterize the lowering of expectations in the Article 18 process as critical for China's compliance effort. Nevertheless, it is an important example of a concerted effort by China to minimize an important obligation undertaken.

With respect to special safeguards, the protocol of accession permits countries to take a safeguard action against imports from China alone where market disruption is caused by increased imports during the transition of China to full implementation of all obligations. In the United States, this safeguard action is referred to as a Section 421 action. In addition, the accession agreement permits Members to apply special textile safeguard provisions until 2008 in order to address import surges of textile products that cause market disruption. Both of these special safeguard measures were important provisions in the US for Congress and many industries concerned about expanded competition with China at a time when China's economic system was still so dissimilar to that of the US. These special measures were important to other countries as well.

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

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adjusting to WTO obligations. Moreover, Congress expressly stated that there was a statutory presumption in favor of providing relief to affected industries.

China, however, has worked very hard in the United States to encourage the US Government not to take advantage of these rights enjoyed by all WTO Members pursuant to China's accession agreement. Indeed, 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. 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 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. CITA's delay was costly to the US textile industry in terms of closed plants and lost jobs.

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

Active monitoring of China's implementation of its WTO commitments is essential to successful integration of China into a rules-based world trade regime and to the ability of China's trading partners to reap the benefits of liberalized trade. Meaningful monitoring is also important to maintaining public support and confidence in the benefits of trade agreements. With respect to China's compliance with the WTO, a number of federal agencies, led by USTR, have devoted special attention and additional resources to monitoring China's implementation, and Congress has mandated that USTR prepare an annual report on China's progress. In addition, the private sector has a strong interest in monitoring China's implementation of its WTO obligations, as it is likely to experience implementation problems first hand. The private sector also supports and supplements the US Government's monitoring efforts by identifying actual and specific incidents of non-compliance.

In addition to US efforts through the WTO to encourage China's WTO compliance, the US has maintained an active series of bilateral discussions with China throughout the past two years. USTR's 2003 China compliance report highlights these bilateral efforts and stresses their importance given China's shortfalls in meeting many of its WTO commitments. The bilateral channels include formal high-level discussions as well as informal meetings. And, in 2003, the

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Administration established the "Trade Dialogue," a sub-cabinet dialogue on WTO compliance and other trade matters that brings together U.S. economic and trade agencies and various Chinese ministries and agencies with a role in China's WTO implementation. Trade Dialogue meetings were convened twice in 2003 (February and November) and were used to communicate specific trade concerns and served as an early warning mechanism for emerging trade disputes.

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". 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.

II. CHINA'S 1ST TWO YEARS OF WTO MEMBERSHIP

It should be noted at the outset that there are two very large overarching issues that are not taken up in the context of this research report but which are being separately pursued by domestic parties -- the issues of China's currency valuation and China's labor practices.¹ Both are potentially of enormous importance to the US-China bilateral trade relationship but are not further addressed in this report.

A. Compliance Efforts

1. Modification to laws, regulations

Accession to the WTO provided a catalyst for sweeping legal reform in China. WTO membership put the Chinese legal system under scrutiny, as China needed to bring its trade-related legal regime into conformity with the WTO Agreements and to honor its obligations with respect to development of the rule of law. In the meantime, as the development of the market economy and privatization gains momentum, China believes there is a need to foster internally a

¹ The Fair Currency Alliance, a group of trade associations and unions representing manufacturing, agriculture and labor, has announced that it intends to develop a "Section 301 Petition" to address the problem of Chinese currency manipulation. See *Fair Currency Alliance Hires Law Firm For 'Section 301' Case On Chinese Currency Manipulation*, FCA press release, January 29, 2004; available at <http://www.cbia.com/Business/TradeInfo/FCA%20Release%20announcing%20law%20firm.pdf>.

On March 16, 2004, the AFL-CIO and the Industrial Union Council filed a Section 301 Petition with the US Trade Representatives Office concerning China's labor practices. As summarized by the AFL-CIO:

The Petition charges that China's brutal repression of internationally recognized workers' rights constitutes an unfair trade practice under Section 301(d) of the Trade Act, and that such repression "burdens or restricts U.S. commerce." It is the first time in the history of Section 301 that a petition has invoked the violation of workers' rights as an unfair trade practice, although it is quite common for corporations to use Section 301 to challenge other unfair trade practices, such as violation of intellectual property rights.

Executive Summary of AFL-CIO Section 301 Petition; see www.aflcio.org/issuespolitics/globaleconomy/ExecSummary301.cfm.

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transparent, predictable and fair legal environment conducive for the smooth operation of its economic reform.²

Both prior to and after WTO accession, China devoted considerable efforts in the reform of its legal system. In December 2002, in the context of the first transitional review held by the General Council, the Chinese representative reported with respect to the overhaul of China's laws and regulations:

[T]o meet the needs of the WTO accession, his government, in accordance with its commitments, had launched a massive program regarding the enactment, amendment and repeal of laws, regulations, and administrative rules, policies and measures which are relevant to or affecting trade in goods, trade in services, trade-related intellectual property rights and assurance of transparency and uniform application of trade regime. In September 2001, the State Council had issued a circular requesting the local governments to review local regulations, administrative rules, policies and measures in line with the principles of uniform application, non-discrimination and transparency. This work had been basically finished.³

As indicated in the minutes of the meeting, the Chinese representative also outlined China's efforts in improving the transparency of its trade regime and ensuring uniform application of its trade policy as integral parts of China's reform of the legal framework:

² The 16th China's Party Congress held in the fall of 2002 laid two cornerstones for the development of a market economy: encouragement of private entrepreneurship and protection of private property. *See, e.g., Party Congress Paves Cornerstones of Market Economy*, People's Daily (12 November 2002); available at http://english.peopledaily.com.cn/200211/12/eng20021112_106694.shtml. As part of the most recent amendments to the Chinese Constitution adopted at the 2nd session of the 10th National People's Congress on March 14, 2004, provisions were added protecting private property and encouraging and supporting the development of non-public economic sectors. *See Top Legislature Closes Session, Adopts Amendment to Constitution*, Xinhua News (March 14, 2004); available at http://news.xinhuanet.com/english/2004-03/14/content_1365556.htm.

³ *Minutes of Meeting Held in the Centre William Rappard on 10-12 and 20 December 2002*, General Council, WT/GC/M/77 (13 February 2003) at para. 30.

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[I]n accordance with Annex 1A to China's Accession Protocol, relevant economic data and information had been provided to the General Council in a timely manner as required by this review. during this first year after China's accession, the notification obligations had been fulfilled with more than 300 pieces of notifications made according to various WTO agreements. A large amount of information had been submitted in advance of review held at subsidiary bodies.

In line with the accession commitments, the China WTO Notification and Enquiry Center had been set up by the Chinese government immediately after the accession to provide enquiry service on trade-related information for all members, enterprises and individuals. The establishment of this enquiry point had been notified to the WTO.

The Chinese government had also designated Foreign Economic and Trade Gazette as the official journal for the laws, regulations and other measure relating to or affecting trade in goods, trade in services, TRIPS and TRIMS, as these laws, regulations and measures could not be enforced before their publication.

* * *

[T]o implement China's commitments, a relatively sophisticated legal system had already been put in place to ensure the uniform implementation of trade policy. According to the existing legislation in China, any enterprise or individual could bring cases of non-uniform application of laws, regulations, administrative rules, policies and measures to the attention of a relevant authority. The governmental administration and institutional reform undertaken by China had formed solid basis for the implementation of this system.⁴

At the Sino-American Legal Exchange Seminar in December 2002, Mr. Li Yuede, Deputy General-Director of the Research Department of the Legislative Affairs Office of the State Council, detailed China's achievement in revamping its laws and regulations:

⁴ *Id.* at para. 29-30.

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After the Sino-American bilateral negotiations concerning China's accession to the WTO were concluded in November 1999, the Chinese Government immediately started adjusting its trade-related domestic legal regime. * * * Until now, at the central level, as arranged by the plan for formulating, revising, repealing relevant domestic laws, the National People's Congress and its Standing Committee has enacted or revised 14 recent laws, * * *; the State Council has formulated or revised 37 administrative regulations, * * * repealed 12 administrative regulations, and stopped implementing 34 other relevant documents; and the relevant departments of the State Council has enacted, revised or repealed about 1000 department rules and other measures. The Supreme People's Court has repealed 20 relevant judicial interpretations and made relevant interpretations for the adjudication of new administrative cases that may arise after the accession. * * * The local regulations and local government rules revised or repealed by the 31 provinces, autonomous regions and municipalities directly under the Central Government and 49 larger cities, together with the relevant documents and other measures the implementation of which was stopped by the foregoing localities totaled more than 190,000, including 1,130 local regulations and 4,490 local government rules.⁵

China has made a determined and good-faith effort to reform its legal system. As the US-China Business Council has commented:

The provisions of a large number of new and amended laws that have been adopted since December 2001 have brought many areas of China's trade and investment regimes into line with WTO obligations and demonstrate the seriousness with which the PRC government has approached the challenge of WTO compliance."⁶

⁵ *Fully Performing Commitments for Accession to WTO and Effectively Improving Transparency of Legal Systems*, Speech Addressed at the Sino-American Legal Exchange Seminar by Deputy General-Director Li Yue-De, Research Department of the Legislative Affairs Office of the State Council, P.R. China.

⁶ *China's WTO Implementation Efforts: An Assessment of the First Nine Months of China's WTO Membership*, Written Testimony of US-China Business Council prepared for the hearing held by USTR on China's compliance with its WTO commitments (September 3, 2002).

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The following tables illustrate the degree to which China has promulgated newly enacted or revised laws and regulations pertaining to trade, both in preparation for and following accession. Many of the laws and regulations listed below have been notified to the WTO (*see* Appendix 7 for a list of laws and regulations notified by China to the WTO since accession).

In summary, for trade in goods, China:

- promulgated a series of regulations and administrative measures concerning import administration of goods, including import quotas, specific tendering, import licensing, automatic import licensing and tariff rate quotas;
- promulgated new laws and regulations in antidumping, countervailing and safeguard measures to bring the trade remedy regime into conformity with the WTO rules.

For the investment regime, China:

- revised the basic laws concerning foreign investment, *i.e.*, *Law on Chinese-Foreign Equity Joint Venture*, *Law on Chinese-Foreign Contractual Joint Venture*, and *Law on Wholly Foreign Owned Enterprises*. The revision includes the elimination and cessation of enforcement of requirements on trade and foreign exchange balancing, local content, export performance, compulsory technology transfer, etc.
- promulgated the revised *Provisions on Guiding Foreign Investment Direction and Industrial Catalogue for Foreign Investment*. Under the new provisions and catalogue, China has liberalized further the restrictions imposed on the proportion of foreign equity in investment projects and opened new sectors to foreign investment. The newly opened sectors include telecommunications, urban water supply and drainage, construction and operation of gas and heat distribution network, which were previously prohibited from any foreign investment.⁷

For trade in services, China :

- issued a series of new regulations and administrative rules in various service sectors (*e.g.*, banking, insurance, legal, telecommunications, freight forwarding, tourism services, audio-visual related services, etc.) to consolidate the legal basis upon which improved market access opportunities for foreign services suppliers rested.⁸

⁷ *Communication from China - Information Provided by China on Annex IA of the Protocol in the context of the Transitional Review Mechanism*, G/TRIMS/W/26 (11 October 2002) at II.3 and IV.8.

⁸ *Report of the Meeting Held on 25 October 2002*, S/C/M/63 (11 November 2002) at para. 18.

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For intellectual property rights protection, China:

- conducted across-the-board amendment of IPR laws and regulations to bring IPR protection in line with the requirements laid out by the TRIPS Agreement respecting copyright, patent, and trademark;
- adopted new regulations governing the protection of layout design of integrated circuits and new varieties of plants;
- with respect to the details of the legal revisions, for example, the amended Trademark Law adds the provisions regarding the protection of geographic indications and well-known trademarks, expands the scope of eligible subject matter of a trademark, stipulates the right of priority, and provides for judicial review of the administrative decisions related to trademark registration. The revised Copyright Law enlarges the scope of protection, clarifies the rights of performers and producers, adds the provisional measures of property and evidence preservation, and stipulates the amount of statutory damages. The revised Patent Law stipulates conditions for granting compulsory licenses, and adds the provision of judicial review for administrative decision regarding patent of utility model and design.⁹

i. Trade in Goods

Import administration

Regulation	Date	Notified to WTO
Implementation rules on administration of automatic import licensing of machinery and electronic products	effective 01 Jan 2002	X
Measures on administration of import of machinery and electronic products	effective 01 Jan 2002	X
Implementation rules on the administration of import quotas of machinery and electronic products	effective 01 Jan 2002	X
Implementation rules on the administration of import of specific machinery and electronic products	effective 01 Jan 2002	X
Interim measures on the administration of import quotas of natural rubber	effective 05 Feb 2002	X
Implementation rules on the administration of import tariff rate quota of wool and wool tops of 2002	effective 05 Mar 2002	X
The quantity, conditions of application and allocation methods of import tariff rate quota of important agricultural products of 2002	effective 10 Feb 2002	X
Interim measures on the administration of import tariff rate quota for	effective 05 Feb 2002	X

⁹ *Transitional Review Mechanism of China - Communication from China*, IP/C/W/382 (16 September 2002).

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Regulation	Date	Notified to WTO
agricultural products		
Interim measures on the administration of import tariff rate quota for agricultural products (new)	effective 27 Sep 2003 after amendment	
Implementation rules on the administration of automatic import licensing of important industrial products	effective 01 Feb 2002	X
Measures on the administration of import licences for goods	effective 01 Jan 2002	X
Circular on the reallocation of import tariff rate quota for important agricultural products of 2002	N/A	X
Measures on the administration of automatic import licensing of goods	effective 01 Jan 2002	X
The allocation methods for import quantity of automobile tyres under import quota and application procedures in the year 2002	promulgated on 18 Jan 2002	X
The allocation method for import quantity of processed oil under import quota and application procedures in the year 2002	promulgated on 18 Jan 2002	X
The allocation methods for import quantity fertilizer under tariff rate quota and application procedures in the year 2002	promulgated on 18 Jan 2002	X
Decree on the adjustment of the import quotas (non-state trading) for processed oil, automobile tyres and crude oil of 2002	promulgated on 13 Aug 2002	X
The allocation methods for import quantity of processed oil under import quota and application procedures in the year 2003	promulgated on 31 July 2002	X
The allocation methods for import quantity of automobile tyres under import quota and application procedures in the year 2003	promulgated on 31 July 2002	X
Implementing Rules on the Allocation of Tariff Rate Quota for Import of Important Agricultural Products for 2003	N/A	X
The Pronouncement on the Re-allocation of the Import Tariff Quota for Important Agricultural Products for 2003	N/A	X
Implementation Rules on the Administration of Tariff Rate Quota for Import of Wool and Wool Tops for 2003	N/A	X
Total Import Volume and Application Procedures for Crude Oil for Non-State Trading in 2004	N/A	X
Total Import Volume, Quota Allocation Criteria and Application Procedures for Processed Oil for Non-State Trading in 2004	N/A	X
Total Amount of Import, Allocation Principles and Application Procedures for the Tariff Rate Quota on Chemical Fertilizer for 2003	N/A	X
Implementation Rules on the Allocation of Tariff Rate Quota for Import of Natural Rubber for 2003	N/A	X
Interim Measures for the Administration of Import under State Trading for Crude Oil, Processed Oil and Chemical Fertilizer	N/A	X
The Application Criteria, Documentation and Procedures Needed in the	N/A	X

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Regulation	Date	Notified to WTO
Submission for the Registration of the Right to Deal in the Non-State Trading Imports of Crude Oil, Processed Oil and Fertilizers		

Trade Remedy Regime

Regulation	Date	Notified to WTO
Regulations on Antidumping	effective 01 Jan 2002	X
Provisional Rules on Initiation of Antidumping Investigations	effective 13 Mar 2002	X
Provisional Rules on Questionnaire in Antidumping Investigation	effective 15 Apr 2002	X
Provisional Rules on Public Hearing in Antidumping Investigations	effective 13 Mar 2002	X
Provisional Rules on Sampling in Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on Disclosure of Information on Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on On-the-Spot Verification in Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on Access to Non-Confidential Information in Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on Price Undertakings in Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on New Shipper Review in Antidumping Investigations	effective 15 Apr 2002	X
Provisional Rules on Refund of Antidumping Duty	effective 15 Apr 2002	X
Provisional Rules on Interim Review of Dumping and Dumping Margin	effective 15 Apr 2002	X
Rules on Investigations and Determinations of Industry Injury for Antidumping	effective 15 Jan 2003	X
Rules on Public Hearings with regard to Investigations of Injury to Industry	effective 15 Jan 2003	X
Regulations on Anti-subsidy	effective 01 Jan 2002	X
Provisional Rules for Initiation of Countervailing Investigation	effective 13 Mar 2002	X
Provisional Rules for Questionnaire in Countervailing Investigation	effective 15 Apr 2002	X
Provisional Rules for On-the-spot Verification of Countervailing Investigation	effective 15 Apr 2002	X
Provisional Rules for Conduct of Public Hearing in Countervailing Duty Investigation	effective 13 Mar 2002	X
Rules on Investigations and Determinations of Industry Injury for Countervailing Measures	effective 15 Jan 2003	X
Regulations on Safeguard	effective 01 Jan 2002	X
Provisional Rules on Initiation of Safeguard Investigations	effective 13 Mar 2002	X

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Regulation	Date	Notified to WTO
Provisional Rules on Hearing in Safeguard Investigations	effective 13 Mar 2002	X
Rules on Investigations and Determinations of Industry Injury for Safeguard	effective 15 Jan 2003	X
Provisions of the Supreme People's Court on Certain Issues Concerning the Applicability of Law in the Hearing and Handling of Antidumping Administrative Cases	effective 01 Jan 2003	
Provisions of the Supreme People's Court on Certain Issues Concerning the Applicability of Law in the Hearing and Handling of Anti-subsidy Administrative Cases	effective 01 Jan 2003	

Rules of Origins

Regulation	Date	Notified to WTO
Proclamation of the General Administration of Customs of the People's Republic of China on Establishment of Pre-determination on Origin of Imports	effective 11 Dec 2001	X
Provisional Rules of Origin for Imports under the First Agreement on Trade Negotiations among Developing Member Countries or the Economic and Social Commission for Asia and the Pacific	effective 01 Jan 2002	X

Customs Valuation

Regulation	Date	Notified to WTO
Rules on Determination on Customs Valuation of Imported and Exported Goods	effective 01 Jan 2002	X
The Customs Regulations of the People's Republic of China Regarding Determination on Customs Value of Royalties and License Fees Related to the Imported Goods	effective 01 July 2003	X

ii. Trade in Services

Regulation	Date	Notified to WTO
Regulations on Administration of Foreign-Funded Financial Institutions	effective 01 Feb 2002	X
Regulations on International Maritime Transportation	effective 01 Feb 2002	X
Regulations on Administration of Travel Agencies	amended on 11 Dec 2001	X
Measures on the Trial of Foreign-Invested Merchandising Enterprises	effective 25 June 1999	X
Measures for Administration of Sino-Foreign Contractual Distribution	effective 10 Dec 2001	X

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Regulation	Date	Notified to WTO
Ventures of Audio-Visual Products		
Provisional Regulations Governing the Foreign Invested Movie Theater	effective 25 Oct 2000	X
Rules for Establishing Foreign-Invested Securities Companies	effective 01 June 2002	X
Rules for Establishing Foreign-Invested Fund Management Companies	effective 01 June 2002	X
Proclamation by the People's Bank of China on the Related Issues of Foreign-Funded Financial Institutions' Market Access	effective 09 Dec 2001	X
Regulations on Administration of Foreign Funded Insurance Companies	effective 01 Feb 2002	X
Measures for Administration of Representative Offices of Foreign-Capital Financial Institutions in China	effective 18 July 2002	X
Provisions on Administration of Foreign Investment in Road Transport Sector	effective 20 Nov 2001	X
Provisions on Administration of International Freight Forwarding Agency Enterprises with Foreign Investment	effective 1 Jan 2003	X
Regulations on Administration of Foreign Invested Telecommunications Enterprises	effective 1 Jan 2002	X
Regulations on Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises	effective 23 Sep 2001	X
Regulations on Exploitation of On-shore Petroleum Resources in Cooperation with Foreign Enterprises	effective 23 Sep 2001	X
Supplementary Circular Concerning the Handling of Delivery Services of Inward-and-Outward Letters and Articles with Letter Nature	effective 5 Sep 2002	X
Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation	effective 1 Mar 2003	X
Measures for the Administration of Foreign-invested International Freight Forwarding Agencies	effective 10 Jan 2003	X
Measures Governing Foreign Invested Distribution Enterprises for Books, Newspapers and Periodicals	effective 1 May 2003	X
Interim Regulations on the Establishment of Travel Agencies with Foreign Majority Ownership and Wholly Owned by Foreign Investors	effective 11 July 2003	X
Administrative Rules Governing the Auto Financing Companies 260	effective 3 Oct 2003	X
Regulations of the People's Republic of China on Chinese-Foreign Cooperation in Running Schools	effective 1 Sep 2003	X
Implementing Rules of the Regulations on the Administration of Foreign-funded Financial Institutions	effective 1 Feb 2002	
Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies	effective 2 Mar 2003	
Rules Governing the Foreign Invested Urban Planning Service Enterprises	effective 1 May 2003	

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Regulation	Date	Notified to WTO
Regulations on the Administration of Foreign Invested Architectural and Engineering Enterprises	effective 1 Dec 2002	
Regulations on the Administration of Foreign Invested Construction Enterprises	effective 1 Dec 2002	
Notice on Issues Relating to the Experimental Establishment of Foreign Invested Logistic Enterprises	effective 20 July 2002	
Implementation Rules for the Administrative Measures on Auto Financing Companies	effective 12 Nov 2003	
Regulations on the Administration of Representative Office of Foreign Law Firms	effective 1 Jan 2002	
Implementation Rules for the Regulations on the Administration of Representative Office of Foreign Law Firms	effective 1 Sep 2002	
Measures for Administration of Representative Offices of Foreign Insurance Institutions	effective 1 Mar 2004	
Implementation Rules for the Regulations on the Administration of International Freight Forwarding Agencies	effective 1 Jan 2004 after amendment	
Provisional Measures on the Administration of Domestic Securities Investment of Qualified Foreign Institutional Investors (QFII)	effective 1 Dec 2002	

iii. Investment Regime

Regulation	Date	Notified to WTO
Law on Chinese-Foreign Equity Joint Venture	amended on 15 Mar 2001	X
Regulations for the Implementation of the Law on Sino-Foreign Equity Joint Venture	amended on 22 July 2001	X
Law on Chinese-Foreign Contractual Joint Venture	amended on 31 Oct 2000	X
Regulations for the Implementation of the Law on Sino-Foreign Contractual Joint Venture	effective 04 Sep 1995	X
Law on Foreign Capital Enterprises	amended on 31 Oct 2000	X
Regulations on the Implementation of the Law on Foreign Capital Enterprise	amended on 12 Apr 2001	X
Industrial Catalogue for Foreign Investment.	effective 1 Apr 2002	
Provisions on Guiding Foreign Investment Direction	effective 1 Apr 2002	X

iv. Intellectual Property Rights Protection

Regulation	Date	Notified to WTO
Copyright Law	amended on 27 Oct 2001	X
Patent Law	amended on 25 Aug 2000	X
Trademark Law	amended on 27 Oct 2001	X
Implementing Rules of the Copyright Law	amended on 15 Sep 2002	X
Implementing Rules of the Patent Law	amended on 01 Feb 2003	X
Implementing Rules of the Trademark Law	amended on 15 Sep 2002	X
Regulations on Protection of Computer Software	amended on 01 Jan 2002	X
Regulations on Protection of New Varieties of Plants	effective 01 Oct 1997	X
Regulations on Protection of Layout Designs of Integrated Circuits	effective 01 Oct 2001	X
Rules for Implementing the Regulations on the Protection of Layout-Designs of Integrated Circuits	effective 01 Oct 2001	X
Regulations on Intellectual Property Rights Protection by the Customs	effective 01 Mar 2004 after amendment	

2. Committee participation

The submission of notifications by Members and reactions thereupon constitute a primary platform of exchanges among Members in each WTO committee, and serve the purpose of ensuring transparency in the multilateral trading system. All 12 Agreements listed in Annex 1A of the WTO Agreement, as well as the GATT 1994, including the six Understandings interpreting certain articles thereof, and the Agreements on Services and TRIPS contain provisions on specific notification obligations and procedures. Members, on a one-time, regular

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or periodic basis, are required to notify relevant committees of their trade-related laws and regulations, new or amended, actions taken, measures maintained, responses to questionnaire or checklists of issues, etc. Some notifications are mandatory, and some are of an *ad hoc* nature. In its 1996 report, the Working Group on Notification Obligations and Procedures under the Council for Trade in Goods categorized notification obligations as follows:

The Group observed that there were three types of notification obligations and procedures in Annex 1A: (i) *ad hoc* notifications which are specifically required when certain actions are taken by a concerned Member; (ii) "one-time only" notifications, most of which are required to provide information on the situations existing at the entry into force of the WTO Agreement for a Member, or within a specified period calculated from that date; and (iii) the regular or periodic notification obligations (semi-annual, annual, biennial, triennial). Of the 175 notification obligations or procedure found in Annex 1A, twenty-six were deemed to be of the regular or periodic type.¹⁰

Notification obligations can be burdensome, particularly for developing countries, as they require consistent efforts and considerable resources on the part of the authorities responsible for providing information and developing countries can experience great difficulty in obtaining accurate data and information. In recent years, more attention has been given to the low compliance rate of developing countries with WTO notification obligations and the need to step up efforts in technical assistance to some developing country Members has been recognized.

Upon accession, aside from the colossal legislative work that China embarked on, China was faced with an enormous task of fulfilling the basic WTO notification obligations as part of

¹⁰ *Report of the Working Group on Notification Obligations and Procedures*, G/L/112 (7 October 1996) at para. 13.

its positive participation in WTO committee activities. The following briefly summarizes the WTO notification obligations that are applicable to China pursuant to specific WTO agreements.

Agreement on Agriculture

1. Article 18.2 requires notification by Members with tariff and other quota commitments recorded in Section I-B (or Section I-A) of Part I of their Schedules for the products concerned in "Table MA:1" (the administration of tariff quota) and "Table MA:2" (imports under tariff and other quota commitments).
2. Article 18.2 requires notification by all Members of "Table DS:1" (domestic support) annually. (Least-developed country Members may notify every second year).
3. Article 18.2 requires notification by all Members of "Table ES:1" (export subsidies) whether or not a base or annual commitment level is shown in Section II of Part IV of their Schedules.

*Agreement on Implementation of Article VI
of the GATT 1994 (Anti-dumping)*

1. Article 16.4 requires notification of a semi-annual report on anti-dumping actions taken within the preceding six months regardless of whether any such actions have been taken.
2. Article 16.4 also requires Members to report without delay all preliminary or final actions taken with respect to anti-dumping measures.
3. Article 18.5 requires the notification of laws, regulations and administrative procedures on antidumping. A notification must be made even when a Member does not maintain such laws/regulations.

*Agreement on the Implementation of Article VI
of the GATT 1994 (Customs Valuation)*

1. Article 22.1 requires the notification of laws and regulations or a communication indicating that the legislation notified under the Tokyo Round Agreement on Customs Valuation remains valid under the WTO Agreement on Customs Valuation.
2. A response to the checklist of issues under G/VAL/5 is required.

Agreement on Import Licensing Procedures

1. Article 7.3 requires a reply to the questionnaire on import licensing procedures by September 30 of each year.
2. Articles 1.4(a)/8.2(b) require the notification of the names of publications in which rules and information concerning import licensing procedures are published, as well as the full text of the relevant laws and regulations.

Agreement on Rules of Origin

1. Article 5.1 requires notification of existing non-preferential rules of origin.
2. Paragraph 4 of Annex II requires notification of existing preferential rules of origin.

Agreement on Safeguards

1. Article 12.6 requires the notification of laws, regulations and administrative procedures concerning safeguards.
2. Article 12.1(a) requires the notification of the initiation of a safeguard investigation.
3. Article 12.1(b) requires the notification of the findings of serious injury or threat thereof caused by increased imports.
4. Article 12.1(c) requires the notification of the decisions to apply safeguard measures.
5. Article 12.4 requires the notification of the application of provisional measures.

Agreement on Sanitary and Phytosanitary Measures

1. Paragraph 5 of Annex B requires the notification of proposed SPS regulations or changes to regulations, which are not the same as an international standard and have a significant effect on trade.
2. Paragraph 6 of Annex B requires the notification of emergency measures. (Annex B, paragraph 6 of the SPS Agreement).

Agreement on Subsidies and Countervailing Measures

1. Article 25.1 requires the annual notifications on subsidies not later than June 30 of each year. Article 25.6 provides that where a Member considers that there are no measures requiring such notification, a "nil" return is necessary.
2. Article 25.11 requires the semi-annual report of countervailing duty actions taken regardless of whether any such actions have been taken.
3. Article 32.6 requires the notification of laws and regulations concerning subsidies and countervailing measures. A notification must be made even where a Member does not maintain such laws/regulations.

Agreement on Technical Barriers to Trade

1. Article 15.2 requires the notification of measures in existence or taken to ensure the implementation and administration of this Agreement.
2. Notifications by standardizing bodies in Member countries whether to accept the Code of Good Practices are required.
3. Article 2.9, 2.10, 5.6, and 5.7 require the notification of draft technical regulations and conformity assessment procedures.

Agreement on Trade-Related Investment Measures

1. Article 5.1 requires the notification of trade-related investment measures Members were applying that were not in conformity with the Agreement on a "one-time" basis within 90 days of the date of entry into force of the WTO Agreement.
2. Article 6.2 requires the notification of publications in which TRIMS may be found.

Agreement on TRIPS

1. Responses to the checklist of issues on enforcement under IP/C/5 are required.
2. Article 63.2 requires the notification of laws and regulations related to intellectual property rights protection.
3. Article 69 requires the notification of contact points for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights.

Agreement on Textiles and Clothing

1. Article 6.1 requires the notifications indicating whether or not the Member wishes to retain the right to use the transitional safeguard mechanism.
2. Notifications under Articles 2.6/2.7 (first integration stage), Articles 2.8(a)/2.11 (second integration stage) and Articles 2.8(b)/2.11 (third integration stage) are required by Members which retain their right to use the transitional safeguard mechanism under Article 6.1.
3. Article 3.1 requires the notifications by Members that maintain quantitative restrictions on textile and clothing products, other than those under the MFA.

GATT 1994 Article XVII:4(a) and the Understanding on the Interpretation of this Article (State Trading Enterprises)

1. New and full responses to the questionnaire on state trading are required triennially. Where a Member considers that there are no activities requiring such notification, a "nil" return is necessary. An updating notification covering any changes are required in every of the intervening years.

Agreement on Preshipment Inspection

1. Article 5 requires the notification of laws and regulations concerning preshipment inspection.

Decision on Notification Procedures for Quantitative Restrictions

1. Under G/L/59, complete notification of quantitative restrictions Members maintain are required by January 31, 1996 and at two-yearly intervals thereafter. Changes to the quantitative restrictions shall be notified as and when these changes occur.

Agreement on Services (GATS)

1. Paragraph 3 of Article III requires the notification of any new (or any changes to existing) laws, regulations or administrative guidelines which significantly affect trade in services covered by specific commitments under this Agreement.

When China's compliance with the above notification obligations is compared with the total number of Members who filed similar notifications in the relevant committees, it is evident that China registered a reasonable record of making required notifications in the first two years of its WTO membership. *See* Appendix 9. In many committees, the low level of compliance by Members with notification obligations has been a major preoccupation. For example, at the Committee on Import Licensing, as noted in its 2003 annual report, by October 2003, 27 members had not submitted any notification since joining the WTO under the Agreement on Import Licensing which requires the mandatory notifications of laws and regulations, as well as annual replies to the questionnaire. Nor have these Members informed the Secretariat of any difficulties that would interfere with their ability to notify, or of any technical assistance needs to improve their compliance.¹¹ By contrast, and as would be expected from a major trading nation, China has submitted most of the required notifications, both mandatory and *ad hoc*, to the various committees.

Even so, China fell short in some respects. At regular committee meetings, while recognizing significant efforts by China to fulfil the notification obligations, some Members also noted problems associated with China's notification practices, as summarized below:

Subsidies and Countervailing Measures

- China has failed to submit the subsidies notification pursuant to Article 25.1 of the Agreement on SCM since accession, a mandatory notification required on an annual basis. The United States voiced its concern over this issue at the committee meeting held on May 8, 2003:

¹¹ *Report (2003) of the Committee on Import Licensing to the Council for Trade in Goods*, G/L/652 (28 October

The US delegate stated that his delegation would like China to confirm that it would meet this year's deadline of 30 June for its subsidy notification. The US delegate stated that China's failure to participate in the notification process undermined the transparency that Members had worked to develop and hampered the ability of Members to confirm that China was complying with its obligations under the Agreement.¹²

- Neither has China submitted the semi-annual report on countervailing duty action taken during the second half of 2002 and the first half of 2003.¹³ Although China has not, since accession, initiated any anti-subsidy investigation, a *nil* notification is necessary pursuant to Article 25.11 of the Agreement on Subsidies and Countervailing Measures.

Sanitary and Phytosanitary Measures

- China made 140 notifications of existing SPS measures upon accession and 42 notifications of new measures within the first two years of WTO membership. However, as noted by Members (such as Canada), there were still certain measures not notified. Among those that were notified, some notifications were circulated very close to the date of entry into force, leaving insufficient time for comment and for comments to be taken into consideration. Moreover, there was a

2003) at para. 10.

¹² *Minutes of the Regular Meeting Held on 8 May 2003*, Committee on Subsidies and Countervailing Measures, G/SCM/M/46 (23 July 2003) at para. 10.

¹³ *See Annex F of Report (2003) of the Committee on Subsidies and Countervailing Measures*, G/L/655 (4 November 2003).

lack of feedback on comments made to the Chinese authorities on SPS notifications.¹⁴

Technical Barriers to Trade

- China made 40 notifications on technical regulations within the first two years of WTO Membership. Nevertheless, as pointed out by Members (such as the US), there was still a lack of notification of all of China's proposals as required under the Agreement, since not all of the ministries in China had notified their proposals.¹⁵

3. Technical assistance program from the WTO and member nations

(a) WTO

The provision of technical assistance and training to developing countries and economies in transition has been a consistent mission of the WTO, and its predecessor the GATT. Historically, they provided such assistance in order to improve developing countries' understanding of the rights and obligations of WTO/GATT membership and to expand their capacity to participate fully. WTO technical assistance is supported by the WTO's regular budget as well as from individual member contributions for that purpose.

¹⁴ *Summary of the Meeting Held on 7-8 November 2002*, Committee on Sanitary and Phytosanitary Measures, G/SPS/R/28 (5 February 2003) at para. 108.

¹⁵ *Minutes of the Meeting of 7 November 2003*, Committee on Technical Barriers to Trade, G/TBT/M/31 (9 December 2003) at para. 51.

The technical assistance activities of the WTO cover broad areas and are provided in various forms. The WTO describes its main technical assistance activities as follows:

Seminars: organized at a national, subregional or regional level. Some seminars are specialized -- focusing on a narrowly defined subject, e.g. anti-dumping, customs valuation, subsidies and countervailing measures -- while others cover broader aspects of the multilateral trading system, e.g. the functioning of the WTO and Multilateral Trade Negotiations.

Workshops: generally focused on a particular area of trade policy, they cover in addition to theoretical explanations, case studies and simulation exercises.

Technical missions: designed to assist countries in drafting and preparing legislation and regulations, and in meeting notification requirements as well as to facilitate the understanding of specific trade policy issues of particular interest to them.

Briefing sessions: generally held for Geneva-based delegations and visiting officials to up-date them on recent developments in the work programme carried out by the World Trade Organization.

Technical cooperation in electronic form: in order to facilitate the dissemination of information on the WTO multilateral trading system, computer-based interactive tools are being developed.¹⁶

The WTO also conducts training courses for government officials of developing and least-developed countries. These courses cover different areas, such as trade policy, trade negotiation skills, regionalism, agriculture, dispute settlement, etc. The WTO, however, does not conduct training activities for private groups or individuals.

Various WTO agreements and decisions mandate that the WTO carry out technical cooperation activities.¹⁷ As reported by the WTO, "the delivery of WTO technical assistance is

¹⁶ See *Activities of WTO Technical Cooperation*, http://www.wto.org/english/tratop_e/devel_e/teccop_e/teccop_act_e.htm.

designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system."¹⁸ The Doha Ministerial Declaration clarified and further enhanced the mandate to provide technical assistance.¹⁹ Following the Doha Ministerial meeting in November 2001, the WTO's General Council "approved a revised budget proposal encompassing, *inter alia*, the doubling of training capacities over a transitional year allowing it, in principle, to be fully operational in 2003."²⁰

At the Doha Ministerial Conference, trade ministers recognized that technical cooperation and capacity building were "core elements of the development dimension of the multilateral trading system."²¹ They also acknowledged that it was important to have coherence and coordination of technical assistance and capacity building activities at three levels: the national level in beneficiary countries, the international level, and the inter-agency level. Because the magnitude of the proposed undertaking required the pooling of resources, "the WTO and OECD Secretariats, along with a number of interested delegations from TRTA/CB [*i.e.*, trade-related technical assistance and capacity building] providers joined their efforts to create

¹⁷ See *Note by the Secretariat: WTO Measures Relating To Developing Country Members*, WT/COMTD/W/10 (8 November 1995); available at http://www.wto.org/english/tratop_e/devel_e/teccop_e/w10_e.doc.

¹⁸ See http://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm.

¹⁹ For example, paragraph 41 of the Doha Ministerial Declaration sets out specific technical assistance and capacity building commitments on various issues such as competition policy, trade facilitation, WTO accession, and intellectual property rights. *Doha WTO Ministerial Declaration*, WT/MIN(01)/DEC/1 (20 November 2001) at para. 41.

²⁰ WT/COMTD/W/89/Rev.1 at 1 (14 January 2002).

²¹ *Second Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building (TRTA/CB)*, at 2 (July 2003) ("*Second Joint WTO/OECD Report on TRTA/CB*"). This report is available at the WTO's website: <http://tcdb.wto.org/publish/Report%202003%20final%20english%20without%20signature.pdf>.

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the Doha Development Agenda Trade Capacity Building Database (TCBDB)."²² This database was established with the purpose of providing information on trade-related technical assistance and capacity building projects. In May 2002 and March 2003, the Director-General of the WTO and the Secretary-General of the OECD sent out requests to countries and multilateral/regional agencies for information about technical assistance projects. Based on the data reported by these entities, the TCBDB collects detailed information concerning more than 8000 activities and projects, both national and regional, provided by "39 bilateral donor countries and multilateral agencies" over the 2001 to early 2003 period.²³

For purposes of the TCBDB database, TRTA/CB activities are defined as those intended to enhance the ability of the recipient country to:

- formulate and implement a trade development strategy and create an enabling environment for increasing the volume and value-added of exports, diversifying export products and markets and increasing foreign investment to generate jobs and trade; **or**
- stimulate trade by domestic firms and encourage investment in trade-oriented industries; **or**

²² *Second Joint WTO/OECD Report on TRTA/CB*, at 2. The TCBDB is accessible at <http://tcbdb.wto.org>.

²³ *Second Joint WTO/OECD Report on TRTA/CB*, at 1. Data were received from the following 23 bilateral donor countries: Australia, Belgium, Canada, Denmark, the European Commission, Finland, France, Germany, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway (partial for 2002), Portugal, Spain, Sweden, Switzerland, the United Kingdom, the United States, the Czech Republic, Iceland, and Thailand. *Id.* at 4, n.7.

The following 16 multilateral agencies provided data: APEC (Asia-Pacific Economic Co-operation), AsDB (Asian Development Bank), EBRD (European Bank for Reconstruction and Development), ESCAP (United Nations Economic and Social Commission for Asia and the Pacific), ESCWA (United Nations Economic and Social Commission for West Asia), FAO (Food and Agriculture Organisation of the United Nations), IMF (International Monetary Fund), IsDB (Islamic Development Bank), ITC (International Trade Centre UNCTAD/WTO), OECD (Organisation for Economic Co-operation and Development), UNCTAD (United Nations Conference on Trade and Development), UNDP (United Nations Development Programme), UNECE (United Nations Economic Commission for Europe), UNIDO (United Nations Industrial Development Organisation), the World Bank's IDA (International Development Agency), and WTO (World Trade Organization). *Id.* at 4, n.8.

- participate in and benefit from the institutions, negotiations and processes that shape national trade policy and the rules and practices of international commerce.²⁴

The TRTA/CB activities are further classified under two main categories -- "trade policy and regulations" and "trade development" -- which are described as follows:

- **Trade policy and regulations** covers support to aid recipients' effective participation in multilateral trade negotiations, analysis and implementation of multilateral trade agreements, trade policy mainstreaming and technical standards, trade facilitation including tariff structures and customs regimes, support to regional trade arrangements and human resources development in trade
- **Trade development** covers business development and activities aimed at improving the business climate, access to trade finance, and trade promotion in the productive sectors (agriculture, forestry, fishing, industry, mining, tourism, services), including at the institutional and enterprise level.²⁵

The WTO and OECD assert that data reported in the TCBDB "can be considered as representative, as almost all the main TRTA/CB providers participate in the Trade Capacity Building Database."²⁶

As a self-selected developing country, China is eligible for technical assistance from the WTO. Both before and since its accession to the WTO, China has been the recipient of substantial technical assistance from the WTO, as well as from other multilateral organizations and from individual countries. The TCBDB database includes extensive information about trade-related technical assistance and capacity building projects that were, or are, focused on

²⁴ *Second Joint WTO/OECD Report on TRTA/CB*, at 2-3.

²⁵ *Second Joint WTO/OECD Report on TRTA/CB*, at 3.

²⁶ *Second Joint WTO/OECD Report on TRTA/CB*, at 4.

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China as a beneficiary country. The TCBDB shows that, during the 2001 to early 2003 period, China was a beneficiary of TRTA/CB activities and projects provided by the following 22 donor countries and multilateral agencies:

Multilateral Agencies	
<ul style="list-style-type: none"> • APEC (Asia-Pacific Economic Co-operation) • AsDB (Asian Development Bank) • ESCAP (UN Economic and Social Commission for Asia and the Pacific) • IDA (International Development Agency) • ITC (International Trade Centre UNCTAD/WTO) • OECD (Organisation for Economic Co-operation and Development) • UNDP (United Nations Development Programme) • UNIDO (UN Industrial Development Organisation) • WTO (World Trade Organization) 	
Donor Countries	
<ul style="list-style-type: none"> • Australia • Belgium • Canada • European Commission • France • Germany • Italy 	<ul style="list-style-type: none"> • Japan • New Zealand • Norway • Sweden • Switzerland • United States

Tables listing all the TRTA/CB activities and projects reported in the TCBDB for which China was a beneficiary are attached as Appendix 10. The following table, identifying those TRTA/CB activities and projects provided by the WTO to China, illustrates the degree to which China has been the beneficiary of extensive and broadly-ranged technical and capacity building assistance. As shown by the table, WTO technical assistance to China has covered a broad range of topics, including SPS (sanitary and phyto-sanitary measures), TBT (technical barriers to trade), trade facilitation, customs valuation, dispute settlement, TRIPS (trade-related intellectual property rights), agriculture, services, industrial tariff negotiations, rules (safeguards, antidumping, and subsidies and countervailing measures), trade and the environment, trade and competition, trade and investment, government procurement, and trade-related training.

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Technical and Capacity Building Assistance Provided to China: 2001 -- Early 2003**

Trade Category	WTO Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade Mainstreaming in PRSPs/dev. plans	<u>Symposium</u> : APEC Informal Group on Implementation of WTO Obligations (Dalian): a presentation on the role that the WTO could play on capacity building in APEC developing countries	4.68	18/08/2001 - 18/08/2001
Trade Mainstreaming in PRSPs/dev. plans	<u>National seminar</u> : Regional Economic Cooperation and China	3.04	19/06/2001 - 20/06/2001
Trade Mainstreaming in PRSPs/dev. plans	<u>Conference</u> : Development of Western China		13/06/2001 - 15/06/2001
Trade Mainstreaming in PRSPs/dev. plans	<u>National Conference</u> : The entry of China into the WTO: economical, and ecological challenges and opportunities	0.20	20/05/2002 - 21/05/2002
Trade Mainstreaming in PRSPs/dev. plans	<u>Symposium</u> : International Symposium on WTO and Legal Services		18/09/2002 - 20/09/2002
Trade Mainstreaming in PRSPs/dev. plans	<u>National seminar</u> : WTO Negotiations: new WTO/ADB/MOFTEC/Beijing University Training Programme. 2002 Beijing International Forum	4.18	11/12/2002 - 20/12/2002
Trade Mainstreaming in PRSPs/dev. plans	<u>Conference</u> : Shanghai WTO Affairs Consultations Center Forum		25/11/2001 - 25/11/2001
Trade Mainstreaming in PRSPs/dev. plans	<u>Conference</u> : Shanghai WTO Affairs Consultations Center Forum		24/11/2001 - 24/11/2001
SPS and TBT	<u>Regional workshop</u> : Codex Committee on Food Export and Import Inspection and Certification Systems (CCFICS).	0.54	25/02/2002 - 01/03/2002
SPS and TBT	<u>Regional seminar</u> : WTO/ESCAP/ASEAN Regional Seminar on TBT for South and South-East Asian economies.	4.05	29/10/2002 - 31/10/2002
SPS and TBT	<u>National seminar</u> : SPS for Chinese officials at the Ministry of Agriculture: Rules and Procedures SPS; Dispute settlement and SPS; Accession and SPS; Relation SPS/TBT.		16/05/2001 - 17/05/2001
SPS and TBT	<u>National seminar</u> : SPS for 16 Officials from the State General Administration for Quality supervision, inspection and quarantine.		16/11/2001 - 21/11/2001
Trade Facilitation	<u>Regional workshop</u> : Market Access and trade facilitation. To lecture how to use two of the analytical tools at disposal at the WTO , the Integrated Data Base and the Consolidated Tariff Schedules.	0.52	19/06/2001 - 21/06/2001
Trade Facilitation	<u>Regional workshop</u> : Trade Facilitation for Asia/ Pacific.	4.66	27/05/2003 - 29/05/2003
Customs Valuation	<u>Conference</u> : 7th APEC Customs-Business Dialogue: "A New Round of WTO Negotiations - Implications of WTO on Customs Facilitation"		13/08/2001 - 14/08/2001
Accession	<u>National seminar</u> : Joint project of the World Bank and the Development Centre of State Council and seminar on the WTO Accession, Policy Reform and Corporate Strategies for Globalization, Poverty Reduction in China.		26/10/2001 - 27/10/2001
Accession	<u>Colloquium</u> : Project on WTO Accession, Policy Reform and Poverty Reduction in China.		06/05/2001 - 07/05/2001
Accession	<u>Symposium</u> : Advisory Services to the reform of Commercial Laws in China, Legal advice to the Financial and Economic Committee of the National People's Congress, Symposium on the need for new legislation after China's accession to the WTO.		23/04/2001 - 26/04/2001
Dispute Settlement	<u>National seminar</u> : Dispute Settlement Procedures and Practices.	7.95	02/07/2002 - 05/07/2002
Dispute Settlement	<u>Regional workshop</u> : Dispute Settlement for 16 Asian Developing Economies.		17/07/2001 - 20/07/2001
Dispute Settlement	<u>Regional seminar</u> : Second WTO/ESCAP Dispute Settlement Procedures and Practices and DSU Negotiations for Asian Countries (II).	3.79	04/06/2002 - 07/06/2002
Dispute Settlement	<u>Regional workshop</u> : First WTO/ESCAP Dispute Settlement Procedures and Practices and DSU Negotiations for Asian Countries (I).		10/04/2002 - 12/04/2002
Dispute Settlement	<u>Regional workshop</u> : Third WTO/ESCAP Dispute Settlement Procedures and Practices, and DSU Negotiations for Asia.	3.24	10/03/2003 - 13/03/2003

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Trade Category	WTO Project / Activity	Amount (\$ '000)	Start Date - End Date
Dispute Settlement	<u>National training course</u> : WTO Dispute Settlement Procedures and Practices.	0.12	24/09/2001 - 28/09/2001
Dispute Settlement	<u>Specialized Course</u> : 5th Specialized Course on Dispute Settlement (English).		30/06/2003 - 04/07/2003
Dispute Settlement	<u>2nd Dispute Settlement Course</u> : Course on Dispute Settlement Rules and Procedures.		08/04/2002 - 12/04/2002
Dispute Settlement	<u>National seminar</u> : Dispute Settlement for four Vice-Ministers (Vice-Presidents and Presidents of Chinese Courts, including the Supreme Court).		11/10/2001 - 11/10/2001
Trade-Related Intellectual Property Rights	<u>Technical mission</u> : Meeting on IPR Legislation of China and the WTO TRIPS Agreement		08/05/2002 - 10/05/2002
Trade-Related Intellectual Property Rights	<u>Conference</u> : WHO seminar on "Health Implications of China's Accession to the WTO"	18.55	28/01/2002 - 01/02/2002
Agriculture	<u>Regional workshop</u> : The Agreement on Agriculture and on-going negotiations for South Asia: "WTO/UNESCAP Regional Training Workshop on Multilateral Negotiations on Agriculture in the WTO" (merged with workshop for East Asia).	2.39	21/07/2003 - 23/07/2003
Agriculture	<u>National seminar</u> : Negotiations on Agriculture	1.07	22/04/2002 - 26/04/2002
Agriculture	<u>Symposium</u> : FAO Intergovernmental Group on <u>Citrus</u> symposium: <u>discuss</u> SPS-related issues	3.69	14/05/2001 - 15/05/2001
Services	<u>National seminar</u> : International Development Trends of Services Sectors: Engineering, Culture	0.32	29/10/2001 - 29/10/2001
Services	<u>Conference</u> : "Local Vision, Global Mission" Second China Telecommunications Roundtable	0.46	20/09/2001 - 21/09/2001
Services	<u>Symposium</u> : Legal Perspective of Cross Border Movement of Natural Persons	0.13	27/03/2002 - 28/03/2002
Services	<u>National workshop</u> : The GATS and on-going negotiations including the scheduling of commitments	6.12	26/08/2003 - 28/08/2003
Services	<u>National seminar</u> : GATS and cultural and educational services	7.58	27/05/2001 - 31/05/2001
Services	<u>Regional workshop</u> : GATS		10/09/2001 - 12/09/2001
Services	<u>National seminar</u> : Trade in Services and GATS		10/12/2001 - 14/12/2001
Services	<u>National seminar</u> : Trade in Services: Expert services in the General Service Trade Convention, Law regulations about expert service, The trend of legislation and administrative regulation about expert service in other countries.		19/11/2001 - 19/11/2001
Services	<u>Workshop</u> : Scheduling of Commitments under GATS.	4.74	27/11/2002 - 29/11/2002
Tariff Negotiations - Non-Agricultural Market Access	<u>National workshop</u> : WTO Notification obligations for China		09/09/2003 - 09/09/2003
Tariff Negotiations - Non-Agricultural Market Access	<u>Regional workshop</u> : Implementation of the Textiles and Clothing Agreement for selected South Asian and new Asian textile exporting countries.	1.87	09/10/2003 - 10/10/2003
Tariff Negotiations - Non-Agricultural Market Access	<u>Conference</u> : China International Cotton Conference: Textile and Clothing issues and the implementation of the Agreement on Textiles and Clothing	4.85	26/06/2001 - 29/06/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>Symposium</u> : WTO Study Tour by members of the National Copyright Association in China (NCAC) - Presentations on Accession, Dispute Settlement, Intellectual Property, Copyright, Enforcement, Notifications and Reviews.		19/07/2001 - 19/07/2001

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Trade Category	WTO Project / Activity	Amount (\$ '000)	Start Date - End Date
Tariff Negotiations - Non-Agricultural Market Access	<u>National seminar</u> : Agriculture, TBT, SPS, and special economic zones		13/12/2001 - 15/12/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>National seminar</u> : Dispute Settlement, WTO Legal aspects, Intellectual Property Rights, and implementation of WTO Agreements - Shenzhen		07/12/2001 - 07/12/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>National seminar</u> : The Multilateral Trading System and WTO Agreements (Kunming)		03/12/2001 - 05/12/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>National training course</u> : The Multilateral Trading System and WTO Agreements (Qingdao)		06/12/2001 - 07/12/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>Conference</u> : China 2002 Annual Conference of the Boao Forum for Asia		11/04/2002 - 14/04/2002
Tariff Negotiations - Non-Agricultural Market Access	<u>Symposium/meeting</u> : 35th Annual Meeting of the Board of Governors of the Asian Development Bank and signature of the MOU between the ADB and the WTO; Consultations with MOFTEC	9.40	09/05/2002 - 13/05/2002
Tariff Negotiations - Non-Agricultural Market Access	<u>National Symposium</u> : Shantou University National Symposium on the WTO: Rules, Implementation, Impact on the Chinese Economy.		04/02/2002 - 05/02/2002
Tariff Negotiations - Non-Agricultural Market Access	<u>Regional workshop</u> : Presentation of the Integrated Data Base (IDB) and related topics; Presentation of the Consolidated Tariff Schedule (CTS) project; Workshop on the IDB dissemination tools.	0.34	16/02/2001 - 19/02/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>Technical mission</u> : Legal Advice on "Uniform Implementation of WTO Agreements on the Entire Customs Territory".		19/04/2001 - 20/04/2001
Tariff Negotiations - Non-Agricultural Market Access	<u>Regional workshop</u> : Market Access Negotiations and IDB/CTS databases for East Asia and the Pacific (14-17 July) - National consultations (18 July).	5.90	14/07/2003 - 18/07/2003
Tariff Negotiations - Non-Agricultural Market Access	<u>National seminar</u> : To train 20 middle-level officials from various Chinese governmental organizations on WTO Agreements.		25/06/2001 - 29/06/2001
Rules	<u>Regional workshop</u> : Anti-dumping for East Asian economies.	9.89	02/12/2002 - 05/12/2002
Rules	<u>National training course</u> : WTO Agreements with special reference to the SCM Agreement (Ji Lin).		06/08/2001 - 10/08/2001
Rules	<u>National seminar</u> : WTO Rules (Anti-Dumping, Safeguards, Subsidies and Countervailing Measures).		24/09/2002 - 25/09/2002
Rules	<u>Regional workshop</u> : Injury Investigation and Determination in Anti-Dumping.	3.49	10/12/2001 - 12/12/2001
Rules	<u>Regional workshop</u> : Subsidy disciplines for selected Asian countries.		18/11/2003 - 20/11/2003
Rules	<u>National seminar</u> : Briefing Session on WTO Agreements for Vice Minister Long Yong Tu: 1. Anti-Dumping, 2. WTO basic rules of transparency and MFN exemptions, 3. Domestic preferential arrangements within a country, 4. Free-Trade areas.		20/12/2001 - 20/12/2001
Rules	<u>National training course</u> : Training Session on the practice of EU Anti-dumping and Anti-subsidy policy for 22 Officials from the State Economic and Trade Commission of China.		28/09/2001 - 28/09/2001
Negotiation Training	<u>Regional training course</u> : WTO, UNESCAP, MOFCOM, PKU -- Advanced Course for Asian and Pacific Senior Government Officials on the Doha Development Agenda Negotiations.	7.96	27/10/2003 - 01/11/2003
Negotiation Training	<u>Regional workshop</u> : Trade Negotiations for Asian economies.	5.33	17/12/2002 - 20/12/2002

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Trade Category	WTO Project / Activity	Amount (\$ '000)	Start Date - End Date
Negotiation Training	<u>Regional workshop</u> : Trade Negotiations Skills for selected Asian and Pacific Countries.	3.27	24/03/2003 - 28/03/2003
Negotiation Training	<u>Specialized Course</u> : 2nd Specialized Course on Trade Negotiations (English).		16/06/2003 - 27/06/2003
Trade and Environment	<u>National seminar</u> : Trade and Environment		20/11/2002 - 21/11/2002
Trade and Environment	<u>Regional seminar</u> : Trade and Environment for Least-Developed and Developing Asian Countries.	3.07	27/03/2001 - 31/03/2001
Trade and Environment	<u>Regional seminar</u> : Trade and Environment for Asian economies.	5.48	13/05/2002 - 15/05/2002
Trade and Competition	<u>National workshop</u> : Singapore Issues: Competition Policy	6.22	30/07/2002 - 31/07/2002
Trade and Competition	<u>Regional seminar</u> : Trade and competition policy in the WTO and sessions on specific enforcement policy issues in developing economies.	0.08	30/07/2001 - 01/08/2001
Trade and Competition	<u>Regional workshop</u> : Trade and Competition Policy for Asia and the Pacific.	7.30	21/01/2003 - 23/01/2003
Trade and Investment	<u>Regional seminar</u> : APEC TRIMs seminar (Xiamen): An introduction to TRIMs Agreement and the trend of future WTO investment discussions - Discussions in the WTO on TRIMs implementation and meeting the development, financial and trade needs of developing economies.		09/09/2001 - 10/09/2001
Trade and Investment	<u>National workshop</u> : Singapore Issues: Trade and Investment	11.00	13/05/2002 - 14/05/2002
Trade and Investment	<u>Regional Seminar</u> : Singapore/WTO/UNCTAD Joint Regional Training Course: Trade and Investment.		06/05/2002 - 08/05/2002
Trade and Investment	<u>Regional seminar</u> : Trade and Investment Policy seminar at Senior Officials level.	4.76	27/06/2002 - 27/06/2002
Transparency and Government Procurement	<u>Regional workshop</u> : Workshop on Accession to the Agreement on Government Procurement.	6.47	27/05/2002 - 28/05/2002
Trade-Related Training Education	<u>Regional workshop</u> : WTO/UNITAR workshop on the Status of the Doha Development Agenda Negotiations, Agriculture, S&D, Implementation issues, Services, and Dispute Settlement.	0.30	29/06/2003 - 03/07/2003
Trade-Related Training Education	<u>Regional workshop</u> : Training of Trainers for Asia and the Pacific.	3.11	12/05/2003 - 30/05/2003
Trade-Related Training Education	<u>Regional training course</u> : 3rd WTO/ESCAP Short Trade Policy Course for ESCAP Members.		18/03/2002 - 29/03/2002
Trade-Related Training Education	<u>Regional training course</u> : 4th WTO/ESCAP Short Trade Policy Course for ESCAP Members.	0.64	18/11/2002 - 29/11/2002
Trade-Related Training Education	<u>Regional training course</u> : IDLI Trade Law Course for Developing countries in Asia and the Pacific.	2.27	21/10/2002 - 08/11/2002
Trade-Related Training Education	<u>Technical mission</u> : Establishment of a WTO Reference Centre. Training in the use of WTO information resources (web-sites and CD-ROMs)		07/04/2001 - 08/04/2001
Trade-Related Training Education	<u>Conference</u> : Uses of WTO Reference Centres (Haikou)		05/06/2001 - 06/06/2001
Trade-Related Training Education	<u>Conference</u> : Uses of WTO Reference Centres (Shanghai)		07/06/2001 - 08/06/2001
Trade-Related Training Education	<u>Technical mission</u> : Establishment of a WTO Reference Centre at the Shenzhen Academy of Standardization and Coding <u>Technology</u> . Training in the use of WTO information resources (web-sites and CD-ROMs)		05/04/2001 - 06/04/2001
Trade-Related Training Education	<u>Technical mission</u> : Establishment of WTO Reference Centre for the Ministry of Foreign Trade and Economic Cooperation	3.35	11/03/2002 - 14/03/2002
Trade-Related Training Education	<u>Regional training course</u> : Second WTO / ESCAP Trade Policy Course on the WTO and the Multilateral Trading System for Asian developing economies.	1.62	21/05/2001 - 01/06/2001
Trade-Related Training Education	<u>Regional training course</u> : Fifth WTO/ESCAP Regional Training Course on WTO Agreements and the Doha Development Agenda.	3.50	18/02/2003 - 28/02/2003

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Trade Category	WTO Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade-Related Training Education	<u>Regular Trade Policy Course</u> : 25th WTO Trade Policy Course (English).		28/04/2003 - 18/07/2003
Trade-Related Training Education	<u>Regional workshop</u> : University Teaching Programme.		06/10/2003 - 10/10/2003
Trade-Related Training Education	<u>18th Trade Policy Course</u> : 18th Trade Policy Course on WTO Matters for English-Speaking Countries.		17/09/2001 - 30/11/2001
Trade-Related Training Education	<u>21st Trade Policy Course</u> : 21st Trade Policy Course on WTO Matters for English-Speaking Countries.		16/09/2002 - 06/12/2002
Trade-Related Training Education	<u>Workshop</u> : Training of Trainers: Launching Conference.	0.34	20/03/2003 - 20/03/2003

* "PRSPs/dev. plans" refers to "poverty reduction strategy papers" and "development plans."

Source: Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database (TCBDB); available at <http://tcbdb.wto.org/index.asp>. The above information is collected and compiled from member-country, country providers and agency providers as well as from the WTO's own sources.

(b) United States

For at least a decade before China's accession to the WTO, the United States had an active program of technical assistance for China, where such assistance was sought, in various areas (such as the enforcement of intellectual property rights) and involving various US agencies. Before China's accession, the US provided technical assistance through educational programs sponsored by the commercial sections, economic sections, agricultural sections, and public affairs sections (PAS) of the US Embassy and Consulate. These programs included trips to China by WTO-related experts to review issues such as standards and certification, information technology, and IPR enforcement; visits to the United States by Chinese officials, journalists, and academics; grants for rule of law programs; and donations of legal texts.²⁷

Following China's accession, the United States increased its focus on providing technical assistance to China in order to assist China in fulfilling its WTO commitments. In 2001, the US Government surveyed its programs and activities that promote trade-related capacity building in

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developing countries and transition economies around the world. The survey was sent to all major federal government departments and agencies and nearly 30 US departments and agencies reported that they provided trade capacity building assistance, including the following:

- **U.S. Department of Agriculture**
 - Agricultural Marketing Service
 - Agricultural Research Service
 - Animal and Plant Health Inspection Service
 - Cooperative Research, Education, and Extension Service
 - Economic Research Service
 - Food Safety and Inspection Service
 - Foreign Agriculture Service
 - Forestry Service
- **U.S. Department of Commerce**
 - Patent and Trademark Office
 - Commercial Law Development Program
 - National Institute of Standards and Technology
- **U.S. Department of Energy**
- **U.S. Department of Justice**
- **U.S. Department of Labor**
- **U.S. Department of State**
- **U.S. Department of Transportation**
- **U.S. Department of Treasury**
- **U.S. Customs Service**
- **U.S. Agency for International Development (USAID)**
 - Overseas Field Missions
 - Regional Bureaus and Central Program Offices
- **U.S. Trade and Development Agency (USTDA)**
- **Environmental Protection Agency**
- **Export Import Bank**
- **Federal Trade Commission**
- **Office of the U.S. Trade Representative**
- **Overseas Private Investment Corporation**
- **Peace Corps**
- **Small Business Administration**²⁸

²⁷ 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>.

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As a result of the government's initial survey in 2001 of trade capacity building activities and funding levels, with subsequent surveys in 2002 and 2003, a database was generated. This database is named the Trade Capacity Building (TCB) Database and is maintained by the U.S. Agency for International Development (USAID).²⁹

The government survey showed that, over fiscal years 1999 through 2001, the United States expended about US\$ 1.3 billion on trade capacity building activities.³⁰ Subsequent updated surveys through fiscal year 2003 show that the US Government spent US\$ 752 million in 2003 and US\$ 638 million in 2002. Thus, from 1999 to 2003, the US effectively doubled the amount it spent on trade-related technical assistance and capacity building, and the cumulative amount expended on trade capacity building from 1999 through 2003 totaled US\$ 2.8 billion. The United States is now the largest single country donor of trade capacity building assistance.³¹

**U.S. Trade Capacity Building Assistance
1999-2003 (in US \$)**

1999	2000	2001	2002	2003
369,139,107	504,459,705	598,749,112	637,835,149	751,710,945

Source: USAID & USTR, U.S. Contributions to Trade Capacity Building: Improving Lives Through Trade & Aid (September 2003) at 16 (Annex).

The types of activities that were the subject of the US Government's survey included assistance to countries "to become aware of, accede to, and participate in the World Trade

²⁸ See US Agency for International Development, *United States Government Initiatives to Build Trade Capacity in Developing and Transition Countries* (Main Report, October 2001) at 52.

²⁹ The USAID TCB database is accessible at <http://quesdb.cdie.org/tcb/index.html>.

³⁰ See US Agency for International Development, *United States Government Initiatives to Build Trade Capacity in Developing and Transition Countries* (Main Report, October 2001) at 3-4. The reported total was comprised of US\$ 327 million in fiscal year 1999, US\$ 457 million in fiscal year 2000, and US\$ 556 million in FY 2001. See *id.*

³¹ US Agency for International Development & US Trade Representative, *U.S. Contributions to Trade Capacity Building: Improving Lives Through Trade & Aid* (September 2003) at 2.

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Organization (WTO) and the global trading system." and assistance "to build the physical, human, and institutional capacity" that allow developing countries "to participate in and benefit more broadly from rules-based trade."³² In particular, the following categories describe in detail the types of trade capacity building assistance provided by the US Government.

WTO Awareness and Accession – To provide a basic understanding of the WTO Agreements, helping accession candidates to identify changes to laws, regulations, policies, and procedures necessary to complete negotiations on the terms of WTO membership.

WTO Agreements – To support countries' efforts towards compliance and implementation, including institution building so that developing and transition countries may reap the benefits of membership.

Trade Facilitation – To lower the costs of engaging in international trade, assistance to business support agencies and market development services, private business organizations, information services, and technology transfer.

Human Resources and Labor Standards – To help workers participate in the gains from trade and protect their rights in trade related sectors, support for workforce skills development, worker rights and labor standards, elimination of child labor exploitation and gender bias.

Financial Sector Development – To help make financial systems responsive to the needs of trade, reforms in banking and securities markets and implementation of laws and regulations that protect and promote trade-related investment.

Trade-Related Infrastructure Development – To build the physical capacity to conduct international commerce, support for trade-related telecommunications, marine ports, airports, and related facilities.

³² See US Agency for International Development, *United States Government Initiatives to Build Trade Capacity in Developing and Transition Countries* (Main Report, October 2001) at 4.

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Environment – To assure that trade is environmentally neutral or positive, efforts to improve environmental regulations and standards, as well as to promote transfer of environmental technology for sustainable development.

Competition Policy – To assure that participation in international trade is conducted on an equal footing and benefits consumers, support for developing and promoting competition, including strengthening antitrust laws and eliminating local monopolies.

Agricultural Development – To extend the benefits of trade to rural sectors, support for trade-related aspects of agriculture technology development and agribusiness.

Services – To help developing and transition countries engage in international services trade, support for the services sectors in those countries.

Governance and Inter-Agency Coordination – To make government trade programs more accountable, trade policies and regulations more transparent, and to improve planning and communications among government agencies working in trade policy formulation and implementation.

With respect to technical and trade capacity building assistance provided to China in particular, the TCB database reports that the US Government expenditures increased from US\$ 825 thousand in 1999 to US\$ 1.7 million in 2003.

**US Government Trade Capacity Building Assistance to China (P.R.C.)
(FY 1999 -- FY 2003) (US \$)**

TCB Categories	1999	2000	2001	2002	2003*
WTO Accession	.	1,000	.	.	.
WTO Agreements (Sum of)	.	.	.	64,723	94,200
Agreement on SPS	.	.	.	2,000	9,200
Agreement on TBT	85,000
Agreement on TRIPs	.	.	.	62,723	.
Trade Facilitation	.	.	.	588,305	585,250
Customs Operation & Administration	585,250
E-Commerce & IT	.	.	.	585,605	.

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Business Services & Training	.	.	.	2,700	.
Physical Infrastructure Development	.	.	711,000	1,597,414	272,660
Environmental Trade & Standards	100,000	.	170,000	150,300	156,000
Trade-Related Agriculture	725,000	.	725,000	550,000	90,240
Tourism Sector Development	156,000
Other Services Development	.	.	187,000	.	376,320
TOTAL	825,000	1,000	1,793,000	2,950,742	1,730,670

* The data for 2003 includes data received up to July 31, 2003.
Source: USAID Trade Capacity Building Database; <http://qesdb.cdie.org/tcb/index.html>.

The USAID database also contains tables describing activities comprising US capacity building assistance to China in fiscal years 2002 and 2003. These descriptive tables are attached hereto as Appendix 11. They list the following capacity building activity titles, which shows the varied range of areas where assistance has been provided to China:

FY 2002: Inland Waterways; Sinopec E-Procurement System; CNS/ATM Master Plan; Agricultural Biotechnology Training Program; Aviation Safety Academy; E-Commerce Policy; Biotech Patenting Speech; CITIES Training; Enforcement provisions of TRIPS & Internet Piracy - video conferences with Chinese judges and the Shanghai Intellectual Property Bureau; Industrial Eco-efficiency; Seminars & Meetings on IPR; TA for International Food Safety; USTR Bilateral Meetings.³³

FY 2003: Bioconversion/Composting; China Cochran Fellowships; China Fisheries & Seafood Expo; Customs Training Program; Seminar on Medical Device Post Market Surveillance and Auditing; Shanghai Power Reliability; Southwestern China Aviation Security; Standards in Trade Workshop; U.S.-China Biotechnology Cooperation.³⁴

Moreover, as reviewed above, the WTO and OECD have developed the comprehensive Doha Development Agenda Trade Capacity Building Database to collect global information about trade-related technical and capacity building projects and activities provided by countries

³³ See <http://qesdb.cdie.org/tcb/pdf/CHINAFY02.pdf>.

³⁴ See <http://qesdb.cdie.org/tcb/pdf/CHINAFY03.pdf>.

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and multilateral organizations. The US Government submitted information to the WTO/OECD database. The following table identifies assistance provided to China by the United States as reported by the US to the WTO/OECD database.

**UNITED STATES
Technical and Capacity Building Assistance Provided to China: 2001 -- Early 2003
Trade Policy and Regulations**

Trade Category	US Project / Activity	Amount (\$ '000)	Start Date - End Date
SPS and TBT	<u>TA for International Food Safety</u> : Sanitary & Phyto-Sanitary Measures - In March 2002, the U.S. Food & Drug Administration's (FDA) Center for Food Safety and Applied Nutrition provided a one week training session at FDA on the US food regulatory system for a visiting WHO Fellow from the Ministry of Public Health in China. The program focused on the roles and responsibilities of U.S. food safety agencies, FDA's approaches for regulations of food additives, control of microbial pathogens, transparency, consumer education, etc., and how the US food safety system and programs are operated within the context of WTO SPS. FDA has a long history of working with foreign government organizations to strengthen the scientific, technical or regulatory expertise in other countries. These activities have usually been initiated by foreign governments, but they have also been initiated by FDA to respond to particular issues. FDA's intent in these activities has been to strengthen the overall regulatory and enforcement infrastructure in these countries in order to enhance public health worldwide and to help ensure the viability of the regulatory systems that govern and oversee FDA-regulated products produced in foreign countries and exported to the United States. The activities have the net effect of enhancing the developing countries' abilities to meet U.S. food safety standards, thereby improving market access opportunities in the United States for their food and agricultural products.	2.00	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>Biotech Patenting Speech</u> : Agreement on TRIPS - Biotech patenting speech. . (June, 2002)	6.00	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>Video conferences w/ Chinese judges & Shanghai Intellectual Property Bureau</u> : Agreement on TRIPS - Enforcement provisions of TRIPS & Internet Piracy - video conferences with Chinese judges and the Shanghai Intellectual Property Bureau. . (May, 2002)	7.00	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>Seminars & Meetings on IPR</u> : Agreement on TRIPS - IP enforcement seminars with Sichuang Province Academy of Social Sciences (researchers, judges, government officials); a TRIPs compliance lecture and Chinese IP statutory initiatives with Chongqing IP officials, Chongqing Academy of Social Sciences, and the Southwestern Univ of Policies and Law in Chongqing City; the USPTO enforcement program seminar with the Shanghai WTOO Enforcement Center; a meeting with the Mayor of Dalian; a meeting with judges; a meeting at the Academy of Sciences; and a meeting with SIPO. (April, 2002)	39.00	30/09/2002 -

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Trade Category	US Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade-Related Intellectual Property Rights	<u>USTR Bilateral Meetings</u> : Agreement on TRIPS - USTR bilateral meetings. (January, 2002)	10.00	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>Geographic Indications Videoconference</u> : Agreement on TRIPS - Geographic Indications videoconference. Participating countries were: Chile, China, Colombia, Costa Rica, El Salvador, Haiti, Jordan, Mexico, Namibia, Paraguay, Peru, Philippines, Singapore, and Uruguay. (March, 2002)	0.23	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>IP Enforcement program with WIPO</u> : Agreement on TRIPS - IP Enforcement program with WIPO. Participating countries were: Albania, Bangladesh, Botswana, Bulgaria, Chile, China, Croatia, Cyprus, Egypt, Kuwait, Malawi, Malaysia, Macedonia, Mexico, Romania, Russia, Saint Lucia, Serbia, Slovakia, Thailand, and Tanzania. (May, 2002)	0.59	30/09/2002 -
Trade-Related Intellectual Property Rights	<u>USPTO/USTR training videoconference</u> : Agreement on TRIPS - USPTO/USTR training (Geneva), television broadcast (videoconference). Participating countries were: Algeria, Barbados, China, Ecuador, Guatemala, Indonesia, Korea, Malaysia, Mexico, Morocco, Panama, Singapore, South Africa, and Tunisia. (February, 2002)	0.08	30/09/2002 -
Trade and Environment	Typical activities included in this category have the objectives of assuring that trade is environmentally neutral or positive; support for efforts to improve environmental regulations and standards; and promoting the transfer of environmental technology for sustainable development.	170.00	30/09/2001 -
Trade and Environment	<u>CITES Training</u> : Environment Sector Trade & Standards - China, as a major consumer of wildlife products and as home to significant endangered wildlife species, is one of the most significant countries in the world in terms of wildlife trade. The U.S. has a longstanding cooperative relationship with China which includes exchanges of experts and government officials responsible for implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In June 2002 FWS officials provided CITES training to Chinese officials in China, met with Chinese wildlife officials and toured major wildlife markets in SE China.		30/09/2002 -
Trade and Environment	<u>Industrial Eco-efficiency</u> : Environment Sector Trade & Standards - In China-US Cooperation in Pollution Prevention and Energy Efficiency EPA cooperates with China State Environmental Protection Administration (SEPA) to establish and implement a more economically efficient environmental management policy for China's industrial sector, focusing on preventing pollution (source reduction) as a preferred approach to environmental management. EPA cooperates with SEPA to establish comprehensive partnership programs to prevent pollution and conserve energy, including partnerships among relevant parts of the Central Government, partnerships among provincial and local governments and partnerships between government and industry. EPA also cooperates with SEPA to enhance China's capacity in pollution prevention and energy efficiency and to obtain information about US pollution prevention technologies and policies. To date, 63 facilities in 4 provinces have enrolled in the pilot partnering programs. Implemented by: EPA.	150.00	30/09/2002 -

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Trade Development

Trade Category	US Project / Activity	Amount (\$ '000)	Start Date - End Date
Business Support Services and Institutions	Typical activities included in this category have the objectives of helping developing and transition countries engage in international services trade, and of supporting the service sectors in those countries.	187.00	30/09/2001 -
Business Support Services and Institutions	<u>CITES Training</u> : Business Services & Training - China, as a major consumer of wildlife products and as home to significant endangered wildlife species, is one of the most significant countries in the world in terms of wildlife trade. The U.S. has a longstanding cooperative relationship with China which includes exchanges of experts and government officials responsible for implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In June 2002 FWS officials provided CITES training to Chinese officials in China, met with Chinese wildlife officials and toured major wildlife markets in SE China.	3.00	30/09/2002 -
E-commerce	<u>200230009B - Sinopec E-Procurement System</u> : E-Commerce Development & Information Technology - TDA approved a grant of \$429,000 for a feasibility study (FS) to define the technical and financial requirements of an e-procurement system for Sinopec International (Sinopec) of Beijing, China. The FS will determine (a) how Sinopec should invest, organize its business, and train its staff to implement the system and (b) what type of system is needed and how best to implement said system. The study is expected to formulate a Strategic Investment and Management Plan, outline a technical implementation plan, write a strategic investment plan for the e-procurement system, write technical specifications for the system, assess staff development and training needs, analyze legal concerns, evaluate cultural concerns, and devise a comprehensive financial plan.	429.00	30/09/2002 -
E-commerce	<u>200230045A - E-Commerce Policy</u> : E-Commerce Development & Information Technology - TDA approved funding of \$156,605.35 for an Orientation Visit (OV) of Chinese officials involved with shaping China's e-commerce policy. The twenty-member delegation will be comprised of public and private sector officials who will travel to Boston, New York, Washington, D.C., and San Francisco over the course of eight days. Site visits will focus on educating the Chinese as to established U.S. practices in the e-commerce sector, especially in terms of technology-neutrality, private-sector leadership, and limited government intervention. The U.S. IT sector's export activities to China will be enhanced should practices similar to US standards be implemented. Computer Frontiers was selected as the IQC contractor.	157.00	30/09/2002 -

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Trade Category	US Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade Promotion Strategy Design and Implementation	<u>200230021A - Agricultural Biotechnology Training Program:</u> Trade-Related Agriculture Development - TDA approved a US\$550,000.00 grant for a technical assistant to the Council for Agricultural Science and Technology (CAST) for the organization and implementation a technical assistance and training program with the Chinese Ministry of Agriculture, its Chinese Academy of Agricultural Science, and other appropriate members of the Chinese State Council's Agricultural GMO Joint-Ministry Conference System. Because of China's uncertainty about the implementation of new Ag-Biotech rules, it has caused new orders for U.S. soybean exports (US\$1 billion) to be halted. The focus of the TA and training program would be to help influence implementation procedures to minimize any negative impact on U.S. exports. Also, TDA's focus is, on keeping the Chinese market open to U.S. soybean and corn products and to promote the U.S. lab equipment for food safety testing purposes.	550.00	30/09/2002 -
Market Analysis and Development	Typical activities included in this category have the objectives of extending the benefits of trade to rural sectors; and supporting trade-related aspects of agriculture technology development and agribusiness.	725.00	30/09/2001 -

Source: Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database (TCBDB); available at <http://tcbdb.wto.org/index.asp>.

In addition to the comprehensive information collected by the USAID database, particular US agencies have provided information about the scope of their technical and trade capacity building assistance to China.

For example, the US Department of Commerce has noted that the goal of its WTO-related training efforts is "to provide Chinese officials with the information they need in order to fully implement their WTO commitments in their relevant sectors."³⁵ In its publication *Export America*, Commerce described three examples of its technical assistance programs for China -- Intellectual Property Rights, Information Technology, and Medical Device Standards.

Intellectual Property Rights

In June of 2001, the U.S. Department of Commerce, in coordination with the U.S. Department of Justice (DOJ) and

³⁵ US Dept. of Commerce, International Trade Administration, Office of Chinese Economic Area, Market Access and Compliance, *Providing Technical Assistance to China*, EXPORT AMERICA (April 2002), at 20. The article is available at http://www.ita.doc.gov/exportamerica/NewOpportunities/no_TechnicalAssistance.pdf.

China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC), conducted one and a half day sessions on Intellectual Property Rights (IPR) in Shenyang, Hangzhou, and Xiamen, China. The program presented issues and options to Chinese officials and entrepreneurs on IPR enforcement, including Trade Related Aspects of Intellectual Property (TRIPS) and comparative criminal practice and procedure. There was also a case study on Intellectual Property, which was originally developed by Commerce's Patent and Trademark Office to train U.S. law enforcement officers, prosecutors, and courts. In addition, two presenters met with judges from Shanghai and Zhejiang Province to better understand China's structure for IPR enforcement.

Information Technology Training

In August 2001, the U.S. Department of Commerce held a WTO Training Program on IT/Telecom Equipment Standards, Testing, and Certification in Beijing, China. The program was hosted in coordination with China's Ministry of Information Industry (MII). With over 70 Chinese and US attendees, the program consisted of presentations from both Chinese and U.S. presenters with discussion periods. The aim of the program was to raise awareness among Chinese IT/Telecom officials and U.S. business leaders of China's WTO obligations, especially those relating to the Information Technology Agreement. Chinese presenters explained current practices and procedures used in testing labs, and opportunities for foreign technical assistance in standards conformity and compliance to international standards. The program was carried out with high-level support from the Chinese government and industry representatives as well as the assistance and support from both the American Embassy and U.S. Foreign and Commercial Service staff. After the program, participants suggested that additional WTO-related training programs be expanded to other cities in China. Participants also noted the need for additional programs dealing with the issue of intellectual property specifically for IT companies.

Medical Device Standards

In September 2001 the U.S. Department of Commerce, in conjunction with the State Drug Administration (SDA) of China, held a 3-day seminar on medical device standards. This seminar included participants from the U.S. and EU private sectors, TD/Medical Device staff and Food and Drug Administration

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(FDA) regulators. The focus of this event was on the role of standards under a Quality System-based regulatory approach. Although medical device safety requirements in the U.S. and EU differ in some technical respects, they both utilize the Quality Systems approach to regulation (essentially, auditing factories that make medical devices to ensure that they make quality products). This is in contrast to the Chinese system of postproduction testing.³⁶

The US Department of Agriculture has organized and provided training programs for China relating to agricultural issues, as described below:

The Department of Agriculture, through its Foreign Agriculture Service (FAS), is coordinating all WTO issues as they relate to agricultural affairs. In April 2001, FAS conducted a WTO-related training program in conjunction with the Cochran Fellowship Program. The program covered such topics as FAS role in trade policy, WTO agreements on agriculture, sanitary and phytosanitary measures and WTO agricultural negotiations. FAS is planning on continuing similar training seminars in China for the future.³⁷

Also, in recent years, the US Trade and Development Agency (USTDA) has funded various technical assistance projects in China. The USTDA is an independent commercially-oriented foreign assistance agency of the US Government which "promotes economic development and trade in developing and middle-income countries by funding feasibility studies, consultancies, training programs and other project planning services."³⁸ USTDA activities cover a wide range of sectors including Energy (Power, Oil and Gas), Telecommunications, Transportation (Aviation, Urban Transit, Rail) and Environment (Hazardous and Solid Waste, Industrial Remediation).

³⁶ *Providing Technical Assistance to China*, EXPORT AMERICA (April 2002), at 20-21.

³⁷ *Providing Technical Assistance to China*, EXPORT AMERICA (April 2002), at 21.

³⁸ See <http://www.tda.gov/region/asiapac.html>.

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USTDA's activities in China were reactivated in 2001, and, as reported by the agency:

grew rapidly during FY 2002, in part due to the Administration's support for China's entry into the World Trade Organization (WTO). The strong demand for USTDA activity in China reflects significant development and trade-capacity needs, arising partly from China's WTO membership and related commitments.³⁹

According to USTDA, trade capacity building is an important part of its portfolio.

During FY 2003, USTDA provided over \$20 million in trade capacity-building assistance worldwide. USTDA works closely with the Office of the U.S. Trade Representative (USTR) to focus the agency's trade capacity-building efforts in areas that are most useful and effective. USTDA supports many important activities involving World Trade Organization (WTO) commitments, the negotiation of free trade agreements, customs reform and modernization, the development of industry standards and regulations, intellectual property rights (IPR) enforcement, and infrastructure modernization to facilitate trade.⁴⁰

As reported in the USTDA's 2002 and 2003 annual reports, the following tables list the title and activity of the USTDA projects involving China, the contractor of the project, and the amount funded for the project.

USTDA Activities in China -- 2002

Title	Activity	US Firm	City & State	Funds Obligated
Inland Waterways	Orientation Visit	Koeppen, Elliott & Associates, Ltd.	Washington DC	137,618
Shanghai Deep-Sea Port at Yangshan	Feasibility Study	Selection in progress		500,000
Shenhua Direct Coal Liquefaction	Feasibility Study	Hydrocarbon Technologies, Inc.	Lawrenceville NJ	150,000
Chongqing Water and Wastewater Treatment	Feasibility Study	Liberty Pacific Direct Investments Limited	Boston MA	450,000
Shanghai Municipal Electric Power Bureau	Orientation Visit	Princeton Energy Resources International, LLC	Rockville MD	133,243
PetroChina Enhanced Oil Recovery	Feasibility Study	Tradewinds Oil and Gas International, Ltd.	Houston TX	270,000
Rescue and Salvage	Orientation Visit	Mendez England & Associates	Chevy Chase MD	121,019
Sinopec E-Trade System	Definitional Mission	Global Resources	Irvine CA	34,721
Sinopec E-Procurement System	Feasibility Study	Selection in progress		429,000
CNS/ATM Master Plan	Desk Study	CORE International	Washington DC	2,500

³⁹ US Trade and Development Agency, *Annual Report 2002*, at 11.

⁴⁰ US Trade and Development Agency, *Annual Report 2003*, at 12.

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Title	Activity	US Firm	City & State	Funds Obligated
CNS/ATM Master Plan	Feasibility Study	The Mitre Corporation	McLean VA	859,796
Agricultural Biotechnology Training Program	Technical Assistance	Council for Agricultural Science and Technology	Washington DC	550,000
Aviation Safety Academy	Training	Interflight Services, Inc.	Bellevue WA	600,000
Geothermal Heat Pump	Desk Study	Geothermal Management Company, Inc.	Frisco CO	2,500
Geothermal Heat Pump	Feasibility Study	Jacwill Services, Inc.	St. Petersburg FL	315,300
Foreign Commercial Service Staff Support	Technical Assistance	US and Foreign Commercial Service	Washington DC	20,000
China Environmental Sector	Definitional Mission	BRISEA International Development, Inc.	Whippany NJ	25,000
China Environmental Sector – Shanghai Municipal Solid Waste	Technical Assistance	Selection in progress		858,000
China Electrical Power Projects	Definitional Mission	Commonwealth Power Corporation	Virginia Beach VA	24,961
China Beijing Water Reuse Conference	Technical Assistance	Richard Mills	Sacramento CA	10,000
China Guangzhou Metro Line 3	Feasibility Study	Selection in progress		523,270
China Shenzhen Metro Phase 2	Feasibility Study	Selection in progress		743,810
China Oil and Gas Sector	Definitional Mission	S.H. Lucas & Associates	Pasadena CA	25,000
China E-Commerce/Telecommunications Projects	Definitional Mission	Global Resources	Irvine CA	34,976
China Aviation and Air Traffic Control Opportunities	Definitional Mission	Transportation & Economic Research Associates, Inc. (TERA)	Sterling VA	24,967
China Beijing Olympics Infrastructure	Definitional Mission	Transportation & Economic Research Associates, Inc. (TERA)	Sterling VA	24,967
China Beijing Olympics Infrastructure – Advanced Traffic Management System	Feasibility Study	Selection in progress		286,890
China E-Commerce Policy	Orientation Visit	Computer Frontiers, Inc.	Germantown MD	156,605
China Sichuan Basin Natural Gas Market and Pricing Study	Desk Study	S.H. Lucas & Associates	Pasadena CA	2,500
China Sichuan Basin Natural Gas Market and Pricing Study	Technical Assistance	USDOE	Washington DC	180,658
China Establishment of US-China Natural Gas Institute	Technical Assistance	Gas Technology Institute (GTI)	Des Plaines IL	500,000
China World Bank Shanghai Urban Environment Project – TOR Review	Desk Study	Jennifer Windus	Great Falls VA	2,500
China World Bank Shanghai Urban Environment Project	Technical Assistance		Selection in progress	498,500
China Lanzhou Ethylene Plant	Desk Study	Gustavson Associates, Inc.	Boulder CO	2,500
China Panel Manufacturing	Desk Study	McKittrick & Associates, Inc.	Oakton VA	2,500
China Tianjin Waste Disposal Facility	Feasibility Study	Selection in progress		223,000
China AirVenture	Orientation Visit	Decision/Analysis Partners	Vienna VA	70,000
China Foot and Mouth Disease	Desk Study	The Peoples Group	Arlington VA	2,500
China WTO-E Learning	Desk Study	MEGA-TECH, Inc.	Falls Church VA	2,500
China WTO-E Learning	Feasibility Study	Alamo Learning Systems	San Ramon CA	417,000
China Desertification Prevention	Desk Study	AJGB Environmental Engineering Specialists	Bellevue WA	2,500
China Desertification Prevention	Feasibility Study	Valmont Industries	Omaha NE	244,200
China Chromium Encapsulation	Desk Study	Environmental Compliance, Inc.	Elma NY	3,895
China Construction Equipment for North-South Water Diversion	Orientation Visit	Mendez England & Associates	Chevy Chase MD	149,171
China Shanghai Power Reliability	Desk Study	J.W. Price & Associates	Tucker GA	2,500
China CNG Bus and Equipment	Orientation Visit	Technical Resources International, Inc. (TRI)	Bethesda MD	169,962
China Airport Emergency / Firefighting	Orientation Visit	MFM Group, Inc.	Miami FL	104,416
China Jiangsu Environmental Monitoring Project	Technical Assistance	Selection in progress		207,000

Source: US Trade and Development Agency, *Annual Report 2002*, at 35.

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USTDA Activities in China -- 2003

Title	Activity	US Firm	City & State	Funds Obligated
Inland Waterways	Orientation Visit	Koepfen, Elliott & Associates, Ltd. (KEA)	Washington DC	2,000
USFCS Officer Wan Xiaolei	Technical Assistance	US and Foreign Commercial Service	Washington DC	16,028
Oil and Gas Sector — Underground Gas Storage	Feasibility Study	Parsons Brinckerhoff Energy Storage Services, Inc. (PB-ESS)	Houston TX	460,000
E-Commerce/Telecommunications Projects -- Emergency 911	Orientation Visit	The Louis Berger Group, Inc.	Washington DC	136,210
Beijing Olympics Infrastructure -- Advanced Traffic Management System	Desk Study	Transportation & Economic Research Associates, Inc. (TERA)	Sterling VA	5,000
Tianjin Hazardous Waste Procurement Audit	Desk Study	Dayton J. Carpenter	Syracuse NY	5,350
Shanghai Power Reliability	Feasibility Study	EPRI PEAC Corporation	Knoxville TN	376,320
Trade Capacity Building Training Program	Desk Study	Global Technology Management, Inc.	Fairfax VA	2,500
Trade Capacity Building Training Program	Feasibility Study	Global Alliance for Trade Efficiency	Washington DC	585,250
SW China Aviation Security	Feasibility Study	Selection in progress		272,660
Di-Methyl Ether Plant	Desk Study	S.H. Lucas & Associates, Inc.	Pasadena CA	2,500
Di-Methyl Ether Plant	Feasibility Study	Fluor Daniel China Services, Inc.	Aliso Viejo CA	675,000
Environmental Sector	Definitional Mission	ECODIT, Inc.	Arlington VA	24,996
Environmental Sector - Bioconversion/Composting for BMAC	Feasibility Study	Eric'sons, The Naturnomics Company	Dallas GA	312,000
Shanghai Emergency Response	Orientation Visit	Koepfen, Elliott & Associates, Ltd. (KEA)	Washington DC	122,963
Cable Television Industry	Orientation Visit	Decision/Analysis Partners	Vienna VA	121,120
Shanghai Centralized Medical Waste Treatment Facility	Feasibility Study	Tetra Tech, Inc.	Pasadena CA	204,900
Hazardous Waste Treatment and Disposal	Definitional Mission	Eurasia Environmental Associates, LLC	Reston VA	23,940
Low-Emission Diesel Fuel	Desk Study	S.H. Lucas & Associates, Inc.	Pasadena CA	4,000
Railway Intermodal Container Transport	Desk Study	William F. Hennessey	Lenoir City TN	2,500
Sludge Management / Beijing Drainage	Feasibility Study	Selection in progress		350,000
Coal Bed Methane	Orientation Visit	Labat-Anderson, Incorporated	McLean VA	86,076
Urban Water	Technical Assistance	Selection in progress		397,000
Water and Wastewater Treatment/Beijing	Feasibility Study	Selection in progress		250,000

Source: US Trade and Development Agency, *Annual Report 2003*, at 32.

A description of USTDA's projects in China during 2001, 2002, and 2003 (through September) is provided in Appendix 12.⁴¹

A number of US agencies conduct and promote "rule of law" programs in China. For example, in August 2002, the Department of Labor announced that it would award up to US\$ 4.5

⁴¹ Additional information is available from the USTDA's annual reports for 2002 and 2003, available at <http://www.tda.gov/abouttda/index.html>.

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million to organizations that develop and implement programs focusing on the promotion of labor rule of law in China through collaboration with central and local government agencies, academic institutions and NGOs.⁴²

USAID also maintains a China Rule of Law program.⁴³

USAID's rule of law program in China strengthens the legal infrastructure for an emerging market economy through: education in international and American legal principles and processes, including transparency, due process, and attorney-client obligations. Specific activities under the program include training to improve Internet and e-commerce regulation, thus promoting both business opportunities and human rights through access to information, as well as training in WTO compliance measures and in promoting health care regulations to address HIV/AIDS issues.⁴⁴

USAID states that the rule of law program will "train Chinese judges, law professors, private sector lawyers and other legal professionals in the content and principles of international and American law with an emphasis on treaty obligations, especially WTO compliance; individual rights and legal ethics."⁴⁵ USAID expects that, by the end of the program, the Chinese "will have a better understanding of the issues inherent in running an effective legal system that takes individual rights into consideration," have the "basis for developing effective regulations for the

⁴² *A China Labor Rule of Law Program; Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications*, 67 Fed. Reg. 50901 (Dept. of Labor, Aug. 6., 2002).

⁴³ See generally USAID's website at http://www.usaid.gov/our_work/democracy_and_governance/regions/ane/china.html.

⁴⁴ See USAID China Rule of Law Data Sheet, available at http://www.usaid.gov/our_work/democracy_and_governance/regions/ane/435-003.pdf.

⁴⁵ See USAID China Rule of Law Data Sheet, available at http://www.usaid.gov/our_work/democracy_and_governance/regions/ane/435-003.pdf.

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Internet and the health care industry," and "will understand better their treaty obligations under the WTO."⁴⁶

In addition, Congress has, in recent fiscal year appropriations, provided funds to promote rule of law programs in China. For example, in the *Consolidated Appropriations Act, 2004*, Congress provided that "not less than \$13,500,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China and Hong Kong."⁴⁷ Similarly, the *Consolidated Appropriations Resolution, 2003*, provided that "not less than \$15,000,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China, Hong Kong and Tibet."⁴⁸ The *Foreign Operations, Export Financing, And Related Programs Appropriations Act, 2002*, made a similar appropriation: "not less than \$10,000,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China."⁴⁹

(c) EU and other countries

In addition to the United States, other countries provide technical and capacity building assistance to China. As China entered the WTO, the EU noted that it was essential that China implement its commitments promptly and accurately. To achieve this goal, the EU committed to working with China and noted that technical assistance would play an important role.

⁴⁶ See USAID China Rule of Law Data Sheet, available at http://www.usaid.gov/our_work/democracy_and_governance/regions/ane/435-003.pdf.

⁴⁷ *Consolidated Appropriations Act, 2004*, Public Law 108-199, Title V, Sec. 526, January 24, 2004.

⁴⁸ *Consolidated Appropriations Resolution, 2003*, Public Law 108-7, 117 STAT. 11, 89, February 20, 2003.

⁴⁹ *Foreign Operations, Export Financing, And Related Programs Appropriations Act, 2002*, Public Law 107-115, 115 STAT. 2118, 2147, January 10, 2002.

Consequently, the EU established cooperation projects designed to help build China's capacity to implement its WTO commitments. Initially, the EU noted that it had established five projects budgeted at about EUR 22 million, including "a framework programme in support of WTO accession," a "broad-based initiative to assist in the reform and restructuring of the financial services sector," the "collection and provision of statistics," the "development of a framework for transparent and non-discriminatory public procurement," and a "series of projects supporting the development of a modern and effective system for the protection of intellectual property rights."⁵⁰ The EU currently summarizes its technical assistance to China as follows:

Since the mid nineties the EU Technical Assistance to China has supported the economic reforms with a particular focus on training and institutional capacity-building. After China's accession to the WTO, it has become of utmost importance that the necessary changes to the trade regime are implemented smoothly, timely and accurately. To this end, the EU is committed to working in partnership with China and determined to share its experience in the WTO. Both regulatory and technical assistance will be key elements to help China meet its WTO obligations and support the changes to be introduced. With a budget totalling € 37 Millions for projects focusing on capacity-building in China's government and administration, and on implementation of its WTO commitments, the EU ranks at the very first place among the donors: in particular a € 15 Millions project adopted by the Commission at the end of 2002 is so far the largest technical assistance programme supporting China's integration into the international trading system; this programme will be launched at the end of 2003.⁵¹

The EU website provides information about specific technical assistance projects for China, referred to as "EU-China Co-Operation Projects."⁵² The EU's assistance program is

⁵⁰ See http://www.delchn.cec.eu.int/en/eu_china_wto/wto9.htm.

⁵¹ See http://europa.eu.int/comm/trade/issues/bilateral/countries/china/index_en.htm.

⁵² See http://www.delchn.cec.eu.int/en/Co-operation/Project_Fiches.htm.

extensive, as demonstrated by the following index⁵³ to the EU-China Co-Operation Projects webpage:

➤ **General**

EU-China Small Project Facility

➤ **Rule of Law and Good Governance**

EU-China Legal & Judicial Co-operation Programme

EU-China Training Programme on Village Governance

EU-China Intellectual Property Rights Co-operation Programme

Human Rights Small Project Facility

China-Europe Public Administration Programme

➤ **Economic & Social Reform**

Framework Programme for EU Support to China's Accession to the WTO

Support to China's Integration into the World Trading System

EU-China Financial Services Co-operation Project

EU-China Enterprise Reform Project

EU-China Civil Aviation Co-operation Project

China-Europe International Business School (CEIBS) Phase II

EU-China Junior Managers Programme

EU-China Programme for the Development of Vocational Training for Industry

EU-China Basic Education Co-operation Programme

EU-China European Studies Centres Programme (ESCP)

Interpreter Training Programmes

Environment and Sustainable Development

EU-China Liaoning Integrated Environmental Programme

EC-China Environmental Management Co-operation Programme (EMCP)

Vehicle Emission Control Co-operation Project

Capacity Building for Municipal Solid Waste Management Reform in China

Panam Integrated Rural Development Project

Natural Forest Management Project

Energy/Environment Programme

➤ **Regional Programmes**

Asia-Invest

Asia Information Technology and Communication Programme (Asia IT&C)

Asia-Link

Asia Urbs

Asia Pro Eco

Integrated Pest Management for Cotton in Asia

➤ **Recently Completed Projects**

EU-China Higher Education Programme

⁵³ See http://www.delchn.cec.eu.int/en/Co-operation/Project_Fiches.htm.

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EU-China Co-operation in the Field of Public Procurement – Pilot Project
 Qinghai Livestock Development
 EU-China Qinghai Potato Development Project
 EU-China Technical & Commercial Co-operation within the Dairy & Food Processing Sector
 EU-China Co-operation Programme in Statistics
 Water Buffalo Development Project
 Vocational Training Project for the Disabled

The EU states that the EU-China co-operation program is "now going beyond traditional development aid into areas such as legal and judicial assistance, social reform, education, the environment," that the "present co-operation portfolio includes some 40 projects with an overall budget of around €270 million," and that the EU's "commitment to co-operation projects is estimated to amount to around €250 million during the period 2002-2006."^{54 55}

Other countries, such as Japan and Switzerland, also provide technical and capacity building assistance to China. The WTO/OECD trade capacity building database lists numerous projects provided by Japan during 2001 - 2003.

**JAPAN
Technical and Capacity Building Assistance Provided to China: 2001 -- Early 2003
Trade Policy and Regulations**

Trade Category	Japan Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade Facilitation	<u>CUSTOMS TECHNICAL COOPERATION</u> : To give participants an opportunity to deepen their knowledge and skills of Customs administration.	32.92	01/01/2001 -
Trade Facilitation	<u>Customs Technical Cooperation</u> : To dispatch experts as lecturers.	3.20	01/04/2002 -
Customs Valuation	<u>CUSTOMS TECHNICAL COOPERATION</u> : To give participants an opportunity to deepen their knowledge and skills of Customs Valuation.	6.09	01/01/2001 -
Customs Valuation	<u>Customs Technical Cooperation</u> : To give participants an opportunity to deepen their knowledge and skills on Customs Valuation.	22.36	01/04/2002 -
Trade-Related Intellectual Property Rights	<u>Customs Technical Cooperation</u> : To dispatch an expert as a lecturer.	16.46	01/04/2001 -

⁵⁴ See http://www.delchn.cec.eu.int/en/Co-operation/General_Information.htm.

⁵⁵ Additional detailed information about EU-China cooperation projects is available at a website titled "EU-China WTO Programme" located at <http://www.eucnwt.com.cn/index.htm>. This site provides information about 118 EU-China activities over the 2001-2003 period.

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Trade Category	Japan Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade-Related Intellectual Property Rights	<u>Customs Technical Cooperation</u> : To give participants an opportunity to deepen their knowledge and skills on Intellectual property rights.	7.27	01/04/2002 -
Trade-Related Training Education	<u>The Administration on the implementation of the WTO Agreements</u> : Training in Japan in Administration/ General.	10.46	30/06/2002 -
Trade-Related Training Education	<u>MANAGEMENT SKILL OF HUMAN RESOURCES DEVELOPMENT</u> : Training in Japan in Trade.	50.36	30/06/2001 -
Trade-Related Training Education	<u>Risk Management of Housing Financial Institution</u> : Training in Japan in Architecture/Housing.	6.95	30/06/2002 -
Trade-Related Training Education	<u>Support for WTO Accession</u> : Training in Japan in Trade.	13.18	30/06/2002 -
Trade-Related Training Education	<u>INTELLECTUAL PROPERTY RIGHTS</u> : Training in Japan in Trade.	31.23	30/06/2002 -
Trade-Related Training Education	<u>Training in Japan in Health/Medicalcare</u> : Training in Japan in Trade.	4.63	30/06/2002 -
Trade-Related Training Education	<u>FOOD MICROBIAL CONTROL</u> : Training in Japan in Health/Medicalcare.	5.43	30/06/2002 -
Trade-Related Training Education	<u>DISTRIBUTION SYSTEM IN THE JAPANESE MARKET</u> : Training in Japan in Trade.	13.34	30/06/2001 -
Trade-Related Training Education	<u>TRADE AND INVESTMENT INSURANCE</u> : Training in Japan in Trade.	2.80	30/06/2002 -
Trade-Related Training Education	<u>INTELLECTUAL PROPERTY RIGHTS IN TECHNOLOGY TRANSFERS</u> : Training in Japan in Trade.	8.76	30/06/2001 -
Trade-Related Training Education	<u>COPYRIGHT SYSTEMS DEVELOPMENT</u> : Training in Japan in Administration/General.	2.64	30/06/2002 -
Trade-Related Training Education	<u>Operation of Understanding on Rules and Procedures Governing the DSU, WTO Agreement</u> : Training in Japan in Trade.	2.16	30/06/2002 -
Trade-Related Training Education	Training in Japan in Trade	112.51	30/06/2001 -
Trade-Related Training Education	Training in Japan in Trade	174.44	30/06/2002 -
Trade-Related Training Education	Technical Cooperation in Trade	0.91	30/06/2001 -
Trade-Related Training Education	Technical Cooperation in Trade	2.72	30/06/2002 -
Trade-Related Training Education	Promoting of Participation of Japanese Citizen in Trade	15.97	30/06/2002 -

Trade Development

Trade Category	Japan Project / Activity	Amount (\$ '000)	Start Date - End Date
Business Support Services and Institutions	<u>Digital ATC</u> : Technical Cooperation in Business Management.	20.85	30/06/2002 -
Business Support Services and Institutions	Technical Cooperation in Business Management	18.11	30/06/2001 -
Business Support Services and Institutions	<u>Administration for Industry and Commerce in China</u> : Training in Japan in Business Management.	55.23	30/06/2001 -
Business Support Services and Institutions	<u>Adjustment of Farm and Cooperative Business to Market Economy for China</u> : Training in Japan in Business Management.	83.61	30/06/2001 -

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Trade Category	Japan Project / Activity	Amount (\$ '000)	Start Date - End Date
Business Support Services and Institutions	<u>CONSULTANCY SERVICE FOR SMALL INDUSTRIES:</u> Training in Japan in Business Management.	4.69	30/06/2001 -
Business Support Services and Institutions	<u>SEM. ON IMPROVEMENT OF THE STATUS OF WOMEN FOR GOV'T OFFICERS:</u> Training in Japan in Business Management.	2.39	30/06/2001 -
Business Support Services and Institutions	<u>PRODUCTION MANAGEMENT(THEORY & PRACTICE ON WORK IMPROVEMENT):</u> Training in Japan in Business Management.	1.48	30/06/2001 -
Business Support Services and Institutions	<u>INVESTMENT PROMOTION SEM.(1) (ASIAN COUNTRIES):</u> Training in Japan in Business Management.	6.26	30/06/2001 -
Business Support Services and Institutions	<u>SEMINAR ON LEGAL SYSTEM RELATED TO DIRECT INVESTMENT:</u> Training in Japan in Business Management.	6.09	30/06/2001 -
Business Support Services and Institutions	<u>PRIV. SECTOR MIDDLE MANAGEMENT FOR THE PACIFIC COOPERATION:</u> Training in Japan in Business Management.	9.37	30/06/2001 -
Business Support Services and Institutions	<u>MANAGEMENT OF CHAMBERS OF COMMERCE AND INDUSTRY:</u> Training in Japan in Business Management.	2.88	30/06/2002 -
Business Support Services and Institutions	Training in Japan in Business Management	301.65	30/06/2001 -
Business Support Services and Institutions	Training in Japan in Business Management	273.64	30/06/2002 -
Business Support Services and Institutions	Technical Cooperation in Business Management	64.28	30/06/2001 -
Business Support Services and Institutions	Technical Cooperation in Business Management	44.73	30/06/2002 -
Business Support Services and Institutions	Technical Cooperation in Business Management	0.08	30/06/2002 -
Business Support Services and Institutions	Technical Cooperation in Business Management	0.16	30/06/2001 -
Business Support Services and Institutions	<u>Technical Cooperation in Business Management:</u> Promoting of Participation of Japanese Citizen in Business Management.	12.94	30/06/2002 -
Trade Promotion Strategy Design and Implementation	<u>Dispatching Technical Experts & Speaker Program:</u> To support reformation of economic structure, in the area of small & medium industry, intellectual property rights, corporate management and economic legal.	830.67	31/12/2002 -
Market Analysis and Development	<u>Small and Medium Scale Enterprises Development:</u> Training in Japan in Industry/General.	0.08	30/06/2001 -
Market Analysis and Development	<u>Study on Small and Medium Enterprise Development in Shenyang and Hanzho:</u> Development Study in Industry/General.	2,516.54	30/06/2001 -
Market Analysis and Development	<u>Study on Small and Medium Scale Enterprises Development Plan in China:</u> Development Study in Industry/General.	1,324.36	30/06/2002 -
Market Analysis and Development	<u>Conformity Assessment Systems For Industry:</u> Training in Japan in Industry/General.	3.27	30/06/2002 -
Market Analysis and Development	<u>Intellectual Property For Apec Economies:</u> Training in Japan in Industry/General.	19.89	30/06/2001 -
Market Analysis and Development	<u>Seminar On Evaluation Of National R&D Projects:</u> Training in Japan in Other Industries.	5.84	30/06/2001 -
Trade Finance	<u>Risk Management of Housing Financial Institution:</u> Development Study in Budget/Finance.	807.11	30/06/2002 -

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Trade Category	Japan Project / Activity	Amount (\$ '000)	Start Date - End Date
Trade Finance	<u>Risk Management of Housing Financial Institution</u> : Technical Cooperation in Budget/Finance.	0.08	30/06/2002 -
Trade Finance	<u>The Study for Improving the Housing Finance Reform in PRC</u> : Development Study in Budget/Finance.	2,168.15	30/06/2001 -
Trade Finance	<u>Promotion Of Small And Medium Sized Industrial Enterprises</u> : Training in Japan in Budget/Finance.	27.82	30/06/2001 -
Trade Finance	<u>Tokyo Executive Seminar on Insurance Regulation and Supervision / The FSA Seminar</u> : Seminars on international issues in insurance supervision, and Japanese supervisory system and experiences.	9.82	10/01/2002 -
Trade Finance	<u>Tokyo Enforcement Seminar on Securities Market Enforcement</u> : International seminar for securities law enforcement practitioners of emerging markets.	9.51	25/02/2002 -
Trade Finance	<u>Tokyo Seminar on Securities Market Regulation 2002</u> : International seminar for practitioners of securities regulatory authorities.	20.05	01/04/2002 -
Trade Finance	<u>Tokyo Seminar on Securities Market Regulation 2001</u> : International seminar for practitioners of securities regulatory authorities.	21.40	02/04/2001 -
Trade Finance	<u>Seminar On Small & Medium Enterprises Development Policies</u> : Training in Japan in Budget/Finance.	3.05	30/06/2001 -
Trade Finance	<u>Seminar On Taxation (General Tax Course)</u> : Training in Japan in Budget/Finance.	9.41	30/06/2001 -
Trade Finance	<u>Seminar On Taxation (Senior Tax Course) II</u> : Training in Japan in Budget/Finance.	9.16	30/06/2001 -
Trade Finance	<u>Financial Industry Information Systems</u> : Training in Japan in Budget/Finance.	2.56	30/06/2002 -

Source: Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database (TCBDB); available at <http://tcbdb.wto.org/index.asp>.

Switzerland's technical assistance to China has focused on environmental projects, among other areas. The WTO/OECD database list the following projects provided to China by Switzerland.

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Technical and Capacity Building Assistance Provided to China: 2001 -- Early 2003
Trade Policy and Regulations**

Trade Category	Switzerland Project / Activity	Amount (\$ '000)	Start Date - End Date
SPS and TBT	<u>China Quality Production of Poultry</u> : The project aims at improving the quality of poultry production in China by supporting the introduction of a quality control system based on the EUREP-Gap (European) requirements and including environmental and social standards.	1,098.26	01/09/2003 - 31/12/2005
Trade and Environment	<u>China Council for International Cooperation on Environment and Development</u> : support of the Task Force "WTO and Environment": The Task Force plans to undertake two major tasks: 1) to conduct an		31/12/2002 -

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Trade Category	Switzerland Project / Activity	Amount (\$ '000)	Start Date - End Date
	integrated environmental impacts assessment of China's WTO accession in some selected sectors that are of importance to the environment and sustainable development; 2) enhancing the capability to participate in the WTO negotiations on trade and the environment.		
Trade and Environment	<u>Task Force "WTO and Environment" of the China Council for International Cooperation on Environment and Development</u> : This projects aims at supporting an high-level advisory body to the Chinese Government in questions relating to environment and development. It will assess the environmental consequences of China's WTO accession, develop appropriate policy measures to support sustainable trade and help China's negotiators to address the environmental issues in the new Round of WTO negotiations. All activities will be supported by the international review-team formed by the members of the task force WTO and Environment.	1,098.26	01/09/2003 - 31/12/2005

Trade Development

Trade Category	Switzerland Project / Activity	Amount (\$ '000)	Start Date - End Date
Market Analysis and Development	Increasing market access for sustainable development: capacity building on norms standards labels and certification	144.53	31/12/2002 -
Market Analysis and Development	Centre pour la promotion de techniques plus respectueuses de l'environnement (Cleaner Production Centre): Chine: Les centres pour une production plus propre (CPC), programme lancé par l'ONUDI, visent à contribuer à l'amélioration des techniques de production et à l'introduction de méthodes de transformation plus éco-efficentes dans les pays en développement, afin de faciliter l'accès de leurs produits sur les marchés internationaux. Les CPC conseillent les PME en matière de gestion écologique et d'efficience énergétique.	3,211.72	27/03/2002 -
Trade Finance	<u>Sichuan Guarantee Fund</u> : Guarantee fund that provides guarantees to local banks to cover loans for SMEs in the city of Chengdu, Sichuan province.	3,660.86	01/09/2003 - 31/12/2006
Trade Finance	<u>China: Training Fund Managers</u> : 3-4 day training course for managers of venture capital funds in China.	732.17	01/09/2003 - 31/12/2003
Trade Finance	<u>Sino-Swiss Partnership Fund / Chine</u> : Prises de participation et prêts pour des projets de joint-ventures entre la Suisse et la Chine.	10,670.46	20/08/2001 -

Source: Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database (TCBDB); available at <http://tcbdb.wto.org/index.asp>.

B. The Transitional Review Mechanism

1. What is required by Article 18 of the Protocol

Prior to acceding to the WTO, China made significant modifications to its trading system. Upon accession, China assumed commitments to liberalize its trading regime, including making further significant reductions in its tariffs and certain non-tariff barriers. However, China's

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accession to the WTO in December 2001 was not the culmination of the transformation of its trading system. Recognizing that China still needed to accomplish huge changes over a period of years before China would be in full compliance with all of its WTO obligations, other Members wanted to establish an annual monitoring mechanism that would oversee the progress of China's compliance with its WTO commitments and that would focus a light on China's implementation process. The United States, for example, explicitly made an annual review of China's compliance with its WTO obligations an element of its national trade policy. In the bill that extended nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, Congress expressly provided:

It shall be the objective of the United States to obtain as part of the Protocol of Accession of the People's Republic of China to the WTO, an annual review within the WTO of the compliance by the People's Republic of China with its terms of accession to the WTO.⁵⁶

This provision is codified at 22 U.S.C. § 6931. Given China's importance to the world trading system, the concerns of the United States and other Members were not surprising.

Thus, in the Protocol on Accession, China agreed to an annual review of its progress in implementing its WTO obligations. As set out in the Protocol, this annual process, referred to as the Transitional Review Mechanism ("TRM"), would occur for eight consecutive years starting in 2002 with one final review of China's compliance and implementation in the tenth year following accession.⁵⁷ The TRM process is unique to China.

⁵⁶ Pub. L. 106-286, div. B, Title IV, § 401, Oct. 10, 2000, 114 STAT. 900.

⁵⁷ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 18.4.

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Article 18 of the Protocol on Accession establishes the Transitional Review Mechanism and sets out the requirements and procedures for conducting the TRM. Article 18 provides that sixteen WTO subsidiary bodies, each of which has a mandate in reviewing China's WTO commitments, shall, within one year of China's accession, and on an annual basis thereafter (for eight years), review China's implementation of its WTO commitments. The sixteen subsidiary bodies with a role in the TRM are:

- Council for Trade in Goods
- Council for TRIPs
- Council for Trade in Services
- Committee on BOP Restrictions
- Committee on Market Access
- Committee on Agriculture
- Committee on Sanitary and Phytosanitary Measures
- Committee on Technical Barriers to Trade
- Committee on Subsidies and Countervailing Measures
- Committee on Anti-Dumping Measures
- Committee on Customs Valuation
- Committee on Rules of Origin
- Committee on Import Licensing
- Committee on TRIMs
- Committee on Safeguards
- Committee on Trade in Financial Services

China is required (pursuant to Protocol Annex 1A) to provide certain specific information to these bodies in advance of their review, and China may raise before these bodies issues relating to commitment reservations by other Members. Each body is directed to report the results of its review to the relevant WTO council, and that council in turn shall make a report to the General Council.⁵⁸

Article 18.2 directs that the General Council shall, within one year of China's accession, and on an annual basis thereafter (for eight years), review China's implementation of its WTO

⁵⁸ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 18.1.

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commitments in accordance with the framework set out in Protocol Annex 1B.⁵⁹ The General Council may make recommendations to China and other Members pursuant to its review.⁶⁰

The text of Article 18 is presented in the following box:

18. Transitional Review Mechanism

1. Those subsidiary bodies¹ of the WTO which have a mandate covering China's commitments under the WTO Agreement or this Protocol shall, within one year after accession and in accordance with paragraph 4 below, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of this Protocol. China shall provide relevant information, including information specified in Annex 1A, to each subsidiary body in advance of the review. China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol, in those subsidiary bodies which have a relevant mandate. Each subsidiary body shall report the results of such review promptly to the relevant Council established by paragraph 5 of Article IV of the WTO Agreement, if applicable, which shall in turn report promptly to the General Council.

2. The General Council shall, within one year after accession, and in accordance with paragraph 4 below, review the implementation by China of the WTO Agreement and the provisions of this Protocol. The General Council shall conduct such review in accordance with the framework set out in Annex 1B and in the light of the results of any reviews held pursuant to paragraph 1. China also can raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol. The General Council may make recommendations to China and to other Members in these respects.

3. Consideration of issues pursuant to this Section shall be without prejudice to the rights and obligations of any Member, including China, under the WTO Agreement or any Plurilateral Trade Agreement, and shall not preclude or be a precondition to recourse to consultation or other provisions of the WTO Agreement or this Protocol.

4. The review provided for in paragraphs 1 and 2 will take place after accession in each year for eight years. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council.

¹ Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, Council for Trade in Services, Committees on Balance-of-Payments Restrictions, Market Access (covering also ITA), Agriculture, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Subsidies and Countervailing Measures, Anti-Dumping Measures, Customs Valuation, Rules of Origin, Import Licensing, Trade-Related Investment Measures, Safeguards, Trade in Financial Services.

Annexes 1A and 1B to the Protocol detail the types of information that China must provide to the relevant subsidiary bodies in the context of the TRM and the issues that the General Council shall address in the TRM.

⁵⁹ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 18.2.

⁶⁰ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 18.2.

Annex 1A organizes the information that China is directed to provide by subject area and, within each area, more specifically identifies that information that China should provide to particular subsidiary bodies. The following identifies the subject areas and summarizes the type of information that China is required to provide within those areas pursuant to Protocol Annex 1A.⁶¹

- **ECONOMIC DATA**, including information regarding:
 - recent import/export statistics
 - current account data on services
 - capital account data regarding foreign direct investment
 - tariff revenues, non-tariff taxes, and other border charges levied exclusively on imports
 - the value of export duties/taxes
 - trade volume subject to tariff exemptions
 - commissions/mark-ups/other fees charged on imports subject to state/designated trading
 - share of import/export trade held by state-owned enterprises (SOEs)
 - annual and 5-year economic development programs, or any industrial/sectoral policies of central and sub-central government entities
 - annual VAT receipts

- **ECONOMIC POLICIES**, including information regarding:
 - non-discrimination (e.g., repeal of WTO-inconsistent laws and regulations; provision of full GATT national treatment)
 - foreign exchange and payments (e.g., exchange measures required by IMF)
 - investment regime
 - pricing policies (e.g., price controls; pricing mechanisms of state trading enterprises (STEs))

- **FRAMEWORK FOR MAKING AND ENFORCING POLICIES**, including information regarding:
 - structure and powers of the government
 - authority of sub-central governments
 - uniform administration
 - revision/enactment of domestic laws and regulations related to WTO commitments

⁶¹ See Protocol on the Accession of the People's Republic of China, WT/L/432 (23 November 2001), Annex 1A.

- **POLICIES AFFECTING TRADE IN GOODS**, including information regarding:
 - tariff rate quotas
 - non-tariff measures (including quantitative import restrictions)
 - import licensing
 - customs valuation
 - export restrictions
 - safeguards
 - technical barriers to trade (e.g., standards and harmonization of standards; conformity assessment bodies and procedures)
 - trade-related investment measures (e.g., status of trade and foreign exchange balancing requirements, local content and export performance offsets and technology transfer requirements; measures concerning motor vehicle production and investment)
 - state trading entities (e.g., extension of trading rights; access to raw materials in textiles; increased access to trade in fertilizer and oil)
 - government procurement (e.g., laws and regulations; transparency)

- **POLICIES AFFECTING TRADE IN SERVICES**, including information regarding:
 - updated laws, regulations, etc. affecting trade in services
 - licensing procedures and conditions between domestic and foreign service suppliers
 - updated lists of authorities responsible for administration of trade in services
 - independence of the regulatory authorities
 - status of licensing applications in sectors where specific commitments were made

- **TRADE-RELATED INTELLECTUAL PROPERTY REGIME**, including information regarding:
 - Copyright, Trademark and Patent Law amendments
 - compliance with and full application of TRIPS Agreement
 - IPR enforcement efforts

- **SPECIFIC QUESTIONS IN THE CONTEXT OF THE TRANSITIONAL REVIEW MECHANISM** (received from either the General Council or any of the subsidiary bodies)

Annex 1B identifies the issues that the General Council should address in the context of the TRM. These are: (1) the review of the TRM reports submitted by each of the responsible

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subsidiary bodies; (2) the state of development of China's trade with other Members and trading partners; and (3) any recent developments and cross-sectoral trade issues respecting China's trade regime.⁶²

The following boxes provide the specific requirements of Annex 1A and Annex 1B.

**ANNEX 1A
INFORMATION TO BE PROVIDED BY CHINA
IN THE CONTEXT OF THE TRANSITIONAL REVIEW MECHANISM**

China is requested to provide information on the following in accordance with Article 18.1 of the Protocol of Accession. The requested information should be provided annually, except in those cases where China and the Members agree that it is no longer required for the review.

I. ECONOMIC DATA

- (a) most recently available import and export statistics by value and volume, by supplier country at the HS 8-digit level
- (b) current account data on services, by source and destination in line with the statistical requirements of the IMF
- (c) capital account data for inward- and outward-realized foreign direct investment by source and destination in line with the statistical requirements of the IMF
- (d) the value of tariff revenues, non-tariff taxes, and other border charges levied exclusively on imports by product or at the highest level of detail possible, but at least by HS heading (4-digit) at the beginning of the review mechanism
- (e) the value of export duties/taxes by product
- (f) the volume of trade subject to tariff exemptions by product or at the highest level of detail possible, but at least by HS heading (4-digit) at the beginning of the review mechanism
- (g) the value of commissions, mark ups and other fees charged on imports subject to state trading or designated trading imposed through government regulation or guidance, if any
- (h) the shares of imports and exports accounted for by the trading activities of state-owned enterprises
- (i) annual economic development programmes, China's five-year programmes and any industrial or sectoral programmes or policies (including programmes relating to investment, export, import, productions, pricing or other targets, if any) promulgated by central and sub-central government entities
- (j) annual receipts under the Value-Added Tax (VAT), with separate information for imports and domestic products as well as information on VAT rebates

II. ECONOMIC POLICIES

1. Non-Discrimination (to be notified to the Council for Trade in Goods)

- (a) the repeal and cessation of all WTO inconsistent laws, regulations and other measures on national treatment
- (b) the repeal or modification to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of: after sales service, pharmaceutical products, cigarettes, spirits, chemicals and boiler and pressure vessels (for pharmaceutical products, chemicals and spirits there is a reservation of the right to use a transitional period

⁶² *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), Annex 1B.

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of one year from the date of accession in order to amend or repeal relevant legislation)

2. Foreign Exchange and Payments (to be notified to the Committee on Balance-of-Payments Restrictions)

- (a) exchange measures as required under Article VIII, Section 5 of the IMF's Articles of Agreement and such other information on China's exchange measures as was deemed necessary in the context of the transitional review mechanism

3. Investment Regime (to be notified to the Committee on Trade-Related Investment Measures)

- (a) completed revisions to investment guidelines in conformity with the WTO Agreement

4. Pricing Policies (to be notified to the Committee on Subsidies and Countervailing Measures)

- (a) application of existing or any other price controls and the reason for their use
(b) pricing mechanisms of China's state trading enterprises for exported products

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

1. Structure and Powers of the Government/Authority of Sub-Central Governments/Uniform Administration (to be notified to the General Council)

- (a) revision or enactment of domestic laws, regulations and other measures related to China's commitments under the WTO Agreement and Protocol, including those of local governments at the sub-national level, that have been promulgated since accession or the previous meeting of the relevant body under the Transitional Review Mechanism
(b) establishment and operation (upon accession) of the mechanism pursuant to Section 2(A), paragraph 4 of the Protocol under which individuals and enterprises can bring cases of non-uniform application of the trade regime to the attention of national authorities

IV. POLICIES AFFECTING TRADE IN GOODS

1. Tariff Rate Quotas (to be notified to the Committee on Market Access)

- (a) administration of TRQs on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements and evidence of a consistent national allocation (and reallocation) policy including:
- (i) provision of volume/value of the quota or TRQ made available;
 - (ii) reallocated quota or TRQ applied for;
 - (iii) the volume/value of requests for allocation or reallocation denied;
 - (iv) fill rates for the quota or TRQ;
 - (v) for TRQs, the amount of any goods entered at the over quota rate; and
 - (vi) time taken to grant a quota or TRQ allocation.

2. Non-Tariff Measures including Quantitative Import Restrictions (to be notified to the Committee on Market Access)

- (a) the introduction, re-introduction or application of any non-tariff measures other than those listed in Annex 3 of the Protocol and elimination of non-tariff measures
(b) implementation of the schedule for phased elimination of the measures contained in Annex 3
(c) quota allocation and reallocation in conformity with WTO requirements, including the Agreement on Licensing Procedures following criteria set out in the Report of the Working Party on the Accession of

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- China ("Report ")
- (d) distribution licences, quotas, tariff rate quotas or any other means of approval for importation are not subject to conditions set out in Section 7, paragraph 3 of the Protocol
- 3. Import Licensing (to be notified to the Committee on Import Licensing)**
- (a) implementation of the provisions of the Agreement on Import Licensing Procedures and the WTO Agreement applying the measures set out in Section 8 of the Protocol including provision of the time taken to grant an import licence
- 4. Customs Valuation (to be notified to the Committee on Customs Valuation)**
- (a) the use of valuation methods, other than the stated transaction value
- 5. Export Restrictions (to be notified to the Council for Trade in Goods)**
- (a) any restrictions on exports through non-automatic licensing or other means justified by specific product under the WTO Agreement or the Protocol
- 6. Safeguards (to be notified to the Committee on Safeguards)**
- (a) implementation of China's Regulation on Safeguards
- 7. Technical Barriers to Trade (to be notified to the Committee on Technical Barriers to Trade)**
- (a) notification of acceptance of the Code of Good Practice not later than four months after China's accession
- (b) periodic review of existing standards of government standardizing bodies and harmonization of the same with relevant international standards where appropriate
- (c) revision of current voluntary national, local and sectoral standards so as to harmonize them with international standards
- (d) use of the terms "technical regulations" and "standards" according to their meaning under the TBT Agreement in China's notifications under the TBT Agreement, including under Article 15.2 thereof and publications referenced therein, and in modifications of existing measures
- (e) review of technical regulations every five years to ensure international standards are used in accordance with Article 2.4 of the Agreement and provision for adoption of international standards as the basis for technical regulation as part of its notification under Article 15.2 of the Agreement
- (f) progress report on increase of the use of international standards as the basis for technical regulations by ten per cent in five years
- (g) provision of procedures to implement Article 2.7 of the Agreement
- (h) provision of a list of relevant local governmental and non-governmental bodies that are authorized to adopt technical regulations or conformity assessment procedures as part of China's notification under Article 15.2 of the Agreement
- (i) ongoing updates on the conformity assessment bodies that are recognized by China
- (j) enactment and implementation of a new law and relevant regulations regarding assessment and control of chemicals for the protection of the environment in which complete national treatment and full consistency with international practices would be ensured within one year after China's accession following conditions set out in 3(t) of the TBT Working Party Report
- (k) information on whether, one year after accession, all conformity assessment bodies and agencies are authorized to undertake conformity assessment for both imported and domestic products and are following the conditions outlined in Section 13, subparagraph 4(a) of the Protocol
- (l) assignment of the respective responsibilities of China's conformity assessment bodies solely on the basis of the scope of work and type of product without any consideration of the origin of a product no later than eighteen months after accession

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(m) notification of the respective responsibilities assigned to China's conformity assessment bodies to the TBT committee 12 months after accession

8. Trade-Related Investment Measures (to be notified to the Committee on Trade-Related Investment Measures)

- (a) elimination and cessation of enforcement of trade and foreign exchange balancing requirements, local content and export performance offsets and technology transfer requirements made effective through laws, regulations or other measures
- (b) amendments to ensure lifting of all measures applicable to motor vehicle producers restricting the categories, types or models of vehicles permitted for production (to be completely removed two years after accession)
- (c) increased limits within which investments in motor vehicle manufacturing could be approved at the provincial government at the levels outlined in the Report

9. State Trading Entities (to be notified to the Council for Trade in Goods)

- (a) progressive abolishment of state trading in respect of silk measures, increasing and extending trading rights, granting the right to trade to all individuals no later than 1 January 2005
- (b) access to supplies of raw materials in the textiles sector at conditions no less favourable than for domestic users, and not adversely affected access to supplies of raw materials as enjoyed under existing arrangements
- (c) progressive increases in access by non state trading entities to trade in fertilizer and oil and the filling of quantities available for import by non state trading entities

10. Government Procurement (to be notified to the Council for Trade in Goods)

- (a) laws, regulations and procedures
- (b) procurement in a transparent manner and application of the MFN principle

V. POLICIES AFFECTING TRADE IN SERVICES (to be notified to the Council for Trade in Services)

- (a) regularly updated lists of all laws, regulations, administrative guidelines and other measures affecting trade in each service sector or sub-sector indicating, in each case, the service sector(s) or sub-sector(s) they apply to, the date of publication and the date of entry into force
- (b) China's licensing procedures and conditions, if any, between domestic and foreign service suppliers, measures implementing the free choice of partner and list of transport agreements covered by MFN exceptions
- (c) regularly updated lists of the authorities, at all levels of government (including organizations with delegated authority) which are responsible for the adoption, implementation and reception of appeals for laws, regulations, administrative guidelines and other measures affecting trade in services
- (d) independence of the regulatory authorities from the service suppliers
- (e) foreign and domestic suppliers in sectors where specific commitments have been undertaken indicating the state of play of licensing applications on sector and sub-sector levels (accepted, pending, rejected)

VI. TRADE-RELATED INTELLECTUAL PROPERTY REGIME (to be notified to the Council for Trade-Related Aspects of Intellectual Property Rights)

- (a) amendments to Copyright, Trademark and Patent Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement bringing all such measures into full compliance with and full application of the TRIPS Agreement and the protection of undisclosed information
- (b) enhanced IPR enforcement efforts through the application of more effective administrative sanctions as

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described in the Report

**VII. SPECIFIC QUESTIONS IN THE CONTEXT OF THE TRANSITIONAL REVIEW MECHANISM
(to be notified to the General Council or relevant subsidiary body)**

- (a) response to specific questions in the context of the transitional review mechanism received from the General Council or a subsidiary body

ANNEX 1B

**ISSUES TO BE ADDRESSED BY THE GENERAL COUNCIL IN ACCORDANCE
WITH SECTION 18.2 OF CHINA'S PROTOCOL OF ACCESSION**

- Review of the reports and the issues referred to in Section 18.1 of China's Protocol of Accession.
- Development of China's trade with WTO Members and other trading partners, including the volume, direction and composition of trade.
- Recent developments and cross-sectoral issues regarding China's trade regime.

The Rules of Procedure of the WTO General Council shall apply unless specified otherwise. China shall submit any information and the documentation relating to the review no later than 30 days prior to the date of the review.

2. Experience in the first review

(a) Timing of review issues

There is no time frame for the conduct of the TRM included in the Protocol of Accession. A few months after China's accession, controversy surfaced over the TRM timing issue as Members sought to get the TRM process started by raising substantive compliance issues and TRM procedural issues at early committee meetings in 2002.

At the request of the United States, "implementation of WTO commitments by the People's Republic of China" was placed on the agenda at the regular meeting of the Council for Services on March 17, 2002. Specifically, the United States raised issues regarding insurance and express delivery services, and stated that it would seek opportunities to raise other issues in other WTO bodies as necessary. The United States also pointed out that WTO Members should

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raise their concerns regarding China's implementation throughout the course of the year, and any such concerns should subsequently be reflected in the annual transitional review at the end of the year. In response, China said the issues raised were too complex for an immediate response, and indicated that it believed the proper forum for raising such issues was in the transitional review mechanism. In China's view, "there was only one annual review within the provisions of Section 18 of the Protocol" and "none of the statements made at this meeting should be included in the annual review within the framework of the TRM."⁶³

Subsequently, at the regular meetings of many committees in the spring and early summer of 2002, preparation in relation to the transitional review mechanism was raised as part of the agenda. The discussions held at these meetings focused on whether new guidelines and procedures needed to be established to advance the TRM process. Members, such as the United States, urged agreement on the three timing issues that the Protocol does not spell out, namely, (1) how far in advance must China submit the relevant information set out in Annex 1A, (2) how far in advance must Members submit their specific questions for China, and (3) how far in advance must China submit its responses to Members' questions.

To ensure adequate time for preparation for a constructive review, the United States proposed a 90-60-30 day formulation in which China's notification would be submitted 90 days in advance of the meeting at which the review would take place, questions would be posed to China 60 days in advance of that meeting, and China would respond to these questions 30 days

⁶³ *Report of the Meeting held on 19 March 2002*, Council for Trade in Services, S/C/M/59 (14 May 2002) at paras. 54-70.

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in advance of the meeting.⁶⁴ China rejected the proposal. At the Committee on Market Access, for example, China stated that its obligation was stipulated in Paragraph 18 and that it was unacceptable to go beyond that and increase the obligations of China in terms of specific time-frames or procedures.⁶⁵

Based on proposals at many committee meetings, committee chairs engaged in informal consultations with China and other Members to resolve their difference of views on TRM procedural matters. By mid-year 2002, it was generally agreed that the first TRM review would be held at the last regular subsidiary body meetings of 2002. However, no consensus was achieved regarding the timing for submission of required information China, questions from Members, and responses by China. Nevertheless, as a voluntary gesture, Members began submitting written questions for the TRM review as early as August 2002. The first TRM review occurred at the Council on TRIPS on September 17, 2002. The following table shows the timing of events during the first TRM in 2002.

Timing of TRM-Related Events -- 2002

2002	Event
March	<ul style="list-style-type: none"> • The US puts "Implementation of commitments by the People's Republic of China" on the agenda of the regular meeting of the Council for Trade in Services.
April	<ul style="list-style-type: none"> • "Preparation in connection with paragraph 18 of the Protocol on the Accession of the People's Republic of China" put on the agenda of the regular meeting of the Committee on Safeguards. • EC raises timing issues in relation to the transitional review at the regular meeting of the Committee on Antidumping Practices.
May	<ul style="list-style-type: none"> • "Preparation in connection with paragraph 18 of the Protocol on the Accession of the People's Republic of China" put on the agenda of the regular meetings of the Committee on Customs Valuation, Subsidies and Countervailing Measures, Import Licensing, and TRIMS.
June	<ul style="list-style-type: none"> • "Preparation in connection with paragraph 18 of the Protocol on the Accession of the People's Republic of China" put on the agenda of the regular meetings of the Committee on Agriculture, Market Access, SPS Measures, Financial Services, and Council for Trade in Services.

⁶⁴ *Minutes of the Regular Meeting Held on 29 - 30 April 2002*, Committee on Safeguards, G/SG/M/19 (16 October 2002) at para. 162.

⁶⁵ *Committee on Market Access - Minutes of the Meeting - Held in the Centre William Rappard on 12 June 2002*, G/MA/M/32 (11 September 2002) at para. 12.2.

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2002	Event
August	<ul style="list-style-type: none"> • Members begin to submit written questions to China in the context of the first TRM.
September	<ul style="list-style-type: none"> • <u>TRM Review held by:</u> <ul style="list-style-type: none"> □ Council for TRIPS □ Committee on Market Access □ Committee on Import Licensing □ Committee on Agriculture
October	<ul style="list-style-type: none"> • <u>TRM Review held by:</u> <ul style="list-style-type: none"> □ Council for Trade in Services □ Committee on TRIMS □ Committee on Safeguards □ Committee on Anti-Dumping Practices □ Committee on Technical Barriers to Trade □ Committee on Trade in Financial Services □ Committee on Subsidies and Countervailing Measures
November	<ul style="list-style-type: none"> • <u>TRM Review held by:</u> <ul style="list-style-type: none"> □ Committee on Customs Valuation □ Committee on SPS Measures □ Committee on Rules of Origin □ Committee on Balance-of-Payments □ Council for Trade in Goods
December	<ul style="list-style-type: none"> • TRM Review by the General Council.

(b) Data supplied by China at beginning of review

Pursuant to Annex 1A of Paragraph 18 of the Protocol of Accession, China is required to submit certain information to the relevant WTO subsidiary bodies in advance of the transitional review. As reviewed in Section B.1. above, the information required covers a wide range of subject areas pertaining to trade, and includes economic data, economic policy, and information on legislative efforts to ensure compliance with specific commitments.

During the first transitional review, China submitted all the information required under Annex 1A except for information on foreign exchange and payments which was supposed to be notified to the Balance-of-Payments Committee.⁶⁶ A detailed list of China's submissions is included in Appendix 1.

⁶⁶ See *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization - Report of the Chairperson to the General Council*, WT/BOP/R/68 (29 November 2002); *Report of the Meeting of 18 November 2002*, WT/BOP/R/69 (28 November 2002).

Article 18 and Annex 1A do not specify the format that China should follow in preparing information submissions. China therefore made the initial determination as to how substantial and detailed the information would be that it submitted. Except for economic data (such as trade statistics, capital account data, current account data, tariff revenue, etc.) and a few areas which could be quantified (such as market access changes in service sectors), most of the information required consisted of a literal introduction of relevant trade regimes and policies, or a description of the status of implementation efforts by China on specific commitments.

Examples of information submissions by China are presented below. The first deals with the pricing mechanism of China's state trading enterprises for export products:

II. Economic Policies

4. Pricing Policies

(b) Pricing mechanism of China's state trading enterprises for export products

The Pricing Law of the People's Republic of China stipulates that state pricing and government guidance pricing only apply to products and services as published, regardless of the ownership of the enterprises. Prices of products and services that are not subject to state pricing and government guidance pricing shall be determined by the market, and eventually by the enterprises themselves. Pricing mechanism of state trading enterprises for exports is also determined by the enterprises with reference to the price of international market. It is generally set by adding cost of distribution (including cost of storage and transportation, interest rate and inspection fees etc.) to the cost of domestic purchase.⁶⁷

A second example details the efforts that China made to increase the use of international standards as the basis for its technical regulations:

⁶⁷ *Transitional Review under Article 18 of the Protocol of Accession of The People's Republic of China - Information Required in Annex 1A, G/SCM/N/92 (31 October 2002).*

IV. Policies Affecting Trade in Goods

7. Technical Barriers to Trade

(f) progress report on increase of the use of international standards as the basis for technical regulations by ten per cent in five years

China committed to increase 10% of its technical regulations taking international standards as the basis. In order to meet this commitment, China is now developing a nationwide programme and annual implementation plan. A nationwide meeting was convened specially for promoting the alignment with international standards and advanced foreign standards. The meeting was attended by more than 30 vice-minister level officials and addressed by the State Councilor Madame WU Yi. To encourage the adoption of international standards, AQSIQ, jointly with other 6 ministries and commissions, published Opinions on Promoting Alignment with International Standards to actively encourage the adoption of international standards. Harmonization of standards has become an important technical foundation for the development of national economy and safeguard for enhancing the overall level of product quality and the competitiveness in domestic and world market, for expanding foreign trade and for maintaining the sustainable, healthy and quick development of the Chinese economy.

The Chinese Government has taken standardization as one of the main strategies for scientific and technological development so as to ensure that international standards are scientifically and promptly adopted. The specific requirements for use of international standards as the basis for technical regulations are: (1) To timely revise the mandatory standards based on relevant international standards once the international standards have been revised, and adopt the newest edition of the international standards; (2) If new mandatory standards or revision of the established ones are necessary, international standards should be used as the basis for both preparation and revision if appropriate; (3) On average there will be an annual 2% increase use of international standards as the basis for technical regulations in five years so that the commitment of 10% increase in 5 years will be definitely met.⁶⁸

In areas where no actions had been taken, in its submission, China simply reconfirmed its determination to fulfil the particular commitment. The following is an example of this kind of response.

⁶⁸ *Transitional Review under Article 18 of the Protocol of Accession of The People's Republic of China - Submission by the People's Republic of China, G/TBT/W/190 (16 October 2002).*

IV. Policies Affecting Trade in Goods

8. Trade-Related Investment Measures

b. Amendments to ensure lifting of all measures applicable to motor vehicle producers restricting the categories, types or models of vehicles permitted for production (to be completely removed two years after accession)

The Chinese government shall completely lift the said measure in line with the commitment made with respect to the timeframe, so as to ensure that motor vehicle producers have right to choose categories, types or models of vehicles they will produce.⁶⁹

At the TRM reviews conducted by a committee to which China submitted information under Annex 1A, China highlighted its efforts in preparing the submission, noted that it had paid special attention to the written questions from certain Members, and expressed its belief that the information it provided appropriately addressed the concerns raised by these Members.

In response to China's submissions, Members generally expressed their appreciation and commented that the information represented a good start to an overall understanding of the compliance efforts made by China. Typically, Members raised few questions regarding the details in China's information submission. This was due to the fact that, in most cases, Members received China's submission only a few days before the TRM review, and, hence, did not have sufficient time for an in-depth examination and analysis prior to the review. Members such as the US and the EC, however, reserved their right to put forward further questions or requests for clarification to China.

Section 18.2 of the Protocol of Accession stipulates that China shall provide information specified in Annex 1A to relevant committees "in advance of the review." However, that provision does not define "in advance of the review." Annex 1B, titled "Issues to be addressed

⁶⁹ *Id.*

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by the General Council in Accordance with Section 18.2 of China's Protocol of Accession," appears to set a timeframe for China's submission by providing that "China shall submit any information and the documentation relating to the review no later than 30 days prior to the date of the review." But, this provision would appear to apply only to China's submission to the General Council, not to its submissions to the subsidiary bodies. In this regard, however, it should be noted that China failed to observe the 30 day timeframe, as its submission to the General Council dated November 19, 2003 was only 21 days prior to the General Council's review on December 10, 2003.

As for the information that China submitted to the other committees or councils, the information was received by the committees or councils, on average, 3 days in advance of the TRM review. At the Council for Trade in Goods, the United States made the following comments:

The representative of the United States said that the information provided was precisely the type of information warranted under the TRM. It would have been helpful to have had information further in advance of the meeting. The US did not have all its experts present to review the Annex 1A submission from China which it had just received and it was difficult to respond to the points made in China's statement at this meeting, not having had the information in advance.⁷⁰

On one occasion, at the Market Access Committee's review, Members raised specific concerns with respect to the information required under Annex 1A. There, Australia noted with interest the information provided in sections (i), (iii) and (iv) concerning China's administration

⁷⁰ *Report of the Council for Trade in Goods on China's Transitional Review*, Council for Trade in Goods, G/L/596 (3 December 2002) at para. 3.27.

of tariff rate quotas, *i.e.*, the volume of TRQs made available, the volume of requests for allocations denied, and the fill rates of tariff rate quotas by July 31, 2002. Australia observed:

[W]ith the exception of wool, all agricultural product tariff quotas were oversubscribed and in most cases the volume of requests for allocation denied were several times the volume of tariff rate quota available. By comparison, and notwithstanding that they cover the period to 31 July, the fill rates for some products were shown to be extremely low. His delegation {*i.e.* the Australian} asked China for a general comment on why it considered the fill rates were generally so low given the heavy oversubscription of many of the tariff rate quotas.⁷¹

China responded with the following explanation:

It was the first year of China's accession and many applicants wanted to get more quotas and the quantity asked by the applicants was much more than the quantity China had committed to under its WTO commitments. So that was why there was a discrepancy, and the low fill rate for certain products was because of the situation of demand and supply in the market. So China could not control the fill rate, it could only guarantee the full allocation of the quotas.⁷²

(c) Willingness of China to respond to questions in writing

Annex 1A of the Protocol of Accession is titled "Information to be Provided by China in the Context of the Transitional Review Mechanism." Under Section VII of Annex 1A, China is required to provide a "response to specific questions in the context of the transitional review mechanism received from the General Council or a subsidiary body." In the first TRM, there was an intense debate over whether China should respond in written form to questions from other WTO Members in advance of the review. Members such as the United States, the EC and

⁷¹ *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at para. 8.46.

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Japan considered written responses as essential to a meaningful review and effective monitoring and argued that China should provide timely and written responses. In response, China took the position that written answers were not required, and that to provide them would be going beyond the mandate of paragraph 18 of the Protocol of Accession, which does not specifically spell out the form that China's responses should take. Generally, China's approach was to address Members' concerns and questions orally at the committee meetings.

The debate over written responses began at the Market Access Committee meeting on September 23, 2002. At that review, Members expressed disappointment over China's inadequate oral responses to their questions and requested prompt written answers. China argued in response that there was no legal obligation to provide answers in written form and the information it had submitted appropriately addressed the concerns raised by Members. China pointed out that although at that meeting "Members had to finalize China's transitional review mechanism on market access, ... other channels for the exchange of information were open."⁷³ In a gesture of goodwill, China proposed to convene an informal meeting to address outstanding issues outside of the TRM process. In the end, however, China's proposal was withdrawn as Members insisted on pursuing formal opportunities to continue the discussion as part of the formal record of the TRM process.

A similar debate occurred in other committee reviews as Members continued to urge China to submit written responses in a timely manner in order to achieve a useful review. In addition, Members pushed for procedures to allow an extended process of questions and

⁷² *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at para. 8.47.

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answers. Members complained that they did not have sufficient time to digest the information and oral responses provided by China at the committee meetings. Such Members did not consider the review completed until there were opportunities to pose further questions in the context of the TRM. At the Antidumping Practices Committee, China reiterated its position in a comprehensive manner with respect to the procedural issues dispute, and again restated its position at the Services Council, which is summarized as follows:

- Paragraph 18 of the Protocol of China's Accession serves as the only legal basis governing the TRM exercise, and no one in the room could justify a request for written responses from that paragraph. It is not the mandate of this Committee to interpret the paragraph.
- The information provided prior to the meeting, at the meeting and the explanations provided, are sufficient for a meaningful review. The statement made by the head of the Chinese delegation will be submitted to the Secretariat and Members can get copies for transparency purposes.
- Members who have any follow-up questions might approach experts present at the review, and China would hold informal bilateral discussions with them. Informal bilateral contacts have nothing to do with the TRM, and China is not intending to substitute this for the multilateral exercise, but to supplement the multilateral exercise.
- The questions could not be exhausted by one TRM. A TRM is an 8-10 year programme, and China does not expect to graduate from an 8-10 year program in one year, so there will be many more opportunities, multilateral and bilateral.⁷⁴

At the meetings of the Council for Trade in Goods held on November 22, 2002, and of the General Council on December 10, 2002, the EC, joined by Japan and the United States, called for more orderly procedures, such as a fixed timetable for the transmission of questions

⁷³ *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at para. 8.52.

⁷⁴ *Chairman's Report to the Council for Trade in Goods on Transitional Review of China*, Committee of Antidumping Practices, G/ADP/8 (18 November 2002) at paras. 57 and 64.

and replies, to be put in place to make the TRM more productive and efficient in the years ahead. The EC argued that the TRM should follow the common rules and practices in the WTO to ensure that questions and replies were exchanged in writing in advance of a committee's meeting.⁷⁵ In response, China reiterated that the TRM had been successful in providing a useful and effective channel for information exchange and mutual understanding between China and other Members, but that China would not agree to any request for a practice beyond the provisions in the Protocol, such as a request for written replies to Members' questions.⁷⁶

(d) Nature of the reports provided

According to article 18.1 of the Protocol of Accession, "each subsidiary body shall report the results of [the TRM] review promptly to the relevant Council established by paragraph 5 of Article IV of the WTO Agreement, if applicable, which shall in turn report promptly to the General Council." As to the nature and substance of the report, the Protocol provides no guidance. During the first TRM, the subsidiary bodies developed a unified approach in preparing their reports. They prepared factual reports, with references to the documents concerned and attached relevant portions of the minutes of the TRM meeting that related to the transitional review. The minutes of the committee meetings reflect the discussions, statements, questions, and responses raised by the Members.

In the first TRM, the form of the committees' reports was not a topic of debate, except to the extent that some Members sought general clarifications. At the Council for TRIPS, Japan

⁷⁵ *Minutes of the Meeting on December 10, 2002*, General Council, WT/GC/M/77 (13 February 2003) at para. 34.

⁷⁶ *See, e.g., Report of the Council for Trade in Goods on China's Transitional Review*, Council for Trade in Goods, G/L/596 (3 December 2002) at para. 3.7.

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emphasized that the report needed to actually reflect the review and provide necessary information for the General Council's to review in order to decide whether to make recommendations. At the Committee on Market Access, Japan raised the following concern as to the nature of the report and the minutes of the meeting:

She {*i.e.*, Japan's representative} had understood the Chairman as stating that the minutes of his meeting would reflect the discussions, statements, and sentiments raised by delegations under this agenda item. Was her understanding correct that the report itself would not reflect the more detailed parts of the substantive discussions or the sentiments raised by the delegations such as the point that there may have been some differences of interpretation of the TRM exercise, and that instead, the report would be a very simple description of the factual exchanges.⁷⁷

The Chairman responded that:

[I]n his own assessment, if the Committee were to try and make the report as comprehensive as possible, it ran the risk of trying to interpret what Members had said. This meant that the Committee would have to come back to clear that report which would be a never ending process because consensus would not be possible on what was said by some delegations at this meeting. That was the reality. On the other hand, the minutes would reflect in a factual manner what had transpired at this meeting. The report would outline that the agenda item was considered but for more substantive coverage of the proceedings the minutes would need to be referred to.⁷⁸

Given the approach of the committees to the nature of their reports, it was not surprising that the final committee reports did not contain any recommendations as to how China could

⁷⁷ *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at para. 8.64.

⁷⁸ *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at para. 8.65.

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improve its compliance efforts. A press report at the time reflected the low expectations for the TRM reports:

[T]he 16 WTO committees that are now working on various parts of the overall review might only be able to issue a report that consists of minutes of various public meetings, the official said. He added that as of now, it appears unlikely that China would agree to a report that includes any finding that China has fallen short on implementation.

Each report from the 16 WTO committees must receive unanimous consent, meaning China could block the adoption of any report that it finds objectionable.⁷⁹

Although paragraph 18 of the Protocol provides that the General Council may make recommendations, no recommendations were generated in the final WTO report by the General Council on the basis of the reports of the 16 subsidiary bodies. Like the committees' reports, the General Council's report required unanimous consent. To the extent that China found any language in the reports unacceptable, it could block adoption. At the end of the first TRM, the committee reports were quietly adopted without controversy.

World Trade Organization members this week quietly and without fanfare adopted the first transitional review mechanism (TRM) report on China's implementation of its WTO obligations, offering light and generally unspecific criticism of how China performed in the first year of its membership.

* * *

The final WTO report, as anticipated, consisted of the minutes of meetings from the 16 WTO subsidiary bodies that analyzed China's compliance efforts over the year. Absent from the final package was any recommendation that China improve its efforts in future TRMs, which are to go on for eight years with a final review scheduled in the tenth year.

⁷⁹ *US has low expectations for WTO review of China Trade Compliance*, INSIDE US-CHINA TRADE, August 21, 2002.

Trade sources noted that China's WTO accession package requires the TRM process, but says only that the General Council "may" make recommendations. A WTO spokesman said there had been no visible push from WTO members to have the report make recommendations for how China could improve its implementation record, or to have some kind of cover statement for the report.

Several trade sources chalked this up to countries' expectation that China would simply reject any recommendation or summary that criticized its performance on implementation in any way.⁸⁰

(e) Issues identified by WTO Members

In the context of the first transitional review, 13 WTO members submitted a total of 74 documents to the 16 WTO subsidiary bodies. With a view to conducting an across-the-board examination of China's compliance efforts in light of the fundamental WTO principles of most-favored nation, national treatment, transparency, and consistency, the submissions of the 12 Members presented comments and raised questions regarding China's first year implementation of its WTO commitments. (Appendix 3 contains a summary table of submissions of questions to China by other WTO Members and Appendix 5 contains a listing of questions and concerns raised by WTO Members in each committee).

The following table shows the number of submissions of questions by WTO Members to the relevant committees and councils in the second TRM.

⁸⁰ *WTO quietly approves China's first compliance review without recommendation*, INSIDE US-CHINA TRADE, December 11, 2002.

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Summary Table of Submissions of Questions to China by WTO Members in the Context of the First TRM

Committees / Councils	Number of Submissions by Concerned Members													Committee Subtotal
	ARG	AUS	CAN	CHE	EEC	FRA	JPN	KOR	MEX	THA	TPKM	TUR	USA	
Agriculture			1		1		1			1			1	5
Antidumping Practices			1		1		1	1			1		1	6
Balance of Payments Restrictions					1								1	2
Customs Valuation					1						1			2
Financial Services			1		1		1				1		1	5
Import licensing					1		1						1	3
Market Access			1		1	1	1						1	5
Rules of Origins											1			1
Safeguards	1				1		1				1	1	1	6
Sanitary and Phytosanitary Measures					1						1		1	3
Subsidies and Countervailing Measures					2		2		1		1		2	8
Technical Barriers to Trade					1		1				1		1	4
Trade-Related Investment Measures					1		1				1		1	4
Council for Trade in Goods					1		1						1	3
Council for Trade in Services		1			1		1				1		1	5
Council for TRIPS		1	1	1	3		3	1					2	12
Subtotal by Country	1	2	5	1	18	1	15	2	1	1	10	1	16	Total 74

Notes:

ARG = Argentina; AUS = Australia; CAN = Canada; CHE = Switzerland; EEC = The European Communities; FRA = France; JPN = Japan; KOR = Korea; MEX = Mexico; THA = Thailand; TUR = Turkey; USA = The United States of America; TPKM = The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Despite a few success stories noted and a general recognition of China's first-year efforts, Members expressed numerous concerns, with an emphasis on the following areas: (i) intellectual property rights protection; (ii) tariff rate quota administration; (iii) auto quota administration; (iv) tariffs; (v) VAT administration; (vi) subsidies; (vii) transparency; and (viii) services. These areas are reviewed below.

i. Intellectual property rights protection (IPR)

At the TRIPS Council, 7 WTO Members presented China with nearly 200 questions respecting the actions it had taken to protect and enforce IPR. While applauding China's efforts to improve the IPR regime, Members strongly complained that China had made little genuine progress, as IPR violations were still rampant in China. The following is a summary of urgent IPR problems noted by the Members.

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- The level of piracy and counterfeiting remains extremely and unacceptably high. Damages are growing serious and export of infringing goods to third countries is beginning to have negative effects on international trade.
- Regarding IPR enforcement:
 - in criminal procedures, China should strengthen criminal penalties and amend guidelines for criminal prosecution;
 - in administrative procedures, China should raise the upper limit of administrative penalties;
 - in judicial procedures, China should reconsider provisions regarding compensation for losses so that judicial recourse would become more attractive.
- China should also strengthen cooperation among different enforcement authorities and eliminate local protectionism.
- China should completely destroy seized infringing goods, in order to prevent repetition of counterfeit crimes, and should not charge a fee for destruction from the rights holders.
- China Customs should be empowered to transfer serious cases they discover to prosecutors for criminal investigation and prosecution. Both the high bonds and storage fees that are requested by the Chinese customs authorities are responsible for deterring many IP owners from recording their rights with Customs. Such bonds should be lessened.
- For the protection of well-known trademarks, foreign well-known trademarks are not given equal treatment with Chinese trademarks. The Chinese Trademark Office, with the issuance of the new Trademark Law and the Implementing Regulations, should begin processing applications for foreign well-known trademarks.
- For patent/trademark application, China should eliminate a requirement under its Patent Law and Trademark Law that foreign applicants carry out procedures to obtain patent/trademark rights in China through representative offices designated by the Chinese Government as those for foreign applicants. This provision is in violation of the national treatment principle under TRIPS.⁸¹

⁸¹ *Minutes of Meeting Held in the Centre Williams Rappard on 17-19 September 2002*, Council for TRIPS, IP/C/M/37/Add.1 (8 November 2002) at paras. 25-60. It should be noted that the TRIPS Council's TRM meeting in the first TRM was held in combination with its normal review of China's TRIPS implementing legislation. As such, most of the issues and concerns addressed at that meeting related to the normal review of China's TRIPS implementing legislation rather than to the TRM per se. Nevertheless, the questions and concerns raised in that context are relevant as well to China's compliance with its TRIPS commitments.

ii. Tariff rate quota administration (TRQ)

China's administration of its tariff rate quotas was a high profile topic during the first TRM. As highlighted in Members' written submission and oral presentations, TRQ administration in China fell far short of China's commitment to ensure that TRQs are administered:

on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ.⁸²

The following is a summary of Members' allegations of major violations of China's TRQ commitments as noted during the first TRM:

- China reserves a portion of TRQs to entities that process commodities for re-export. This sub-quota system is not based on consumer preferences and end-user demand but on the government's subjective and non-transparent assessment of demand for processing.
- China has failed to provide a list of quota holders which is important for exporters to identify potential business partners and verify China's efforts to fill up quota shares.
- China requires quota-holders to provide detailed, time-sensitive commercial information, such as price and origin, prior to obtaining an import license. These requirements unduly restrict end-users' ability to adjust to market conditions and to operate based on commercial considerations.
- Procedures in China for importers to apply for TRQs and receive TRQ certificates are cumbersome. The end users need to apply to SDPC twice for a single allocation - once for the initial allocation and a second time for SDPC's approval to use that allocation on the condition that the importer has a signed contract. Quota-holders are then required to apply for and obtain, at both the

⁸² *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 116.

local and national level, an additional import license from AQSIQ before the product can be imported.

- China committed to TRQ allocations that would be made in commercially-viable shipping quantities. Reports from traders, however, indicate that some allocations are in commercially-nonviable amounts.
- The 2002 TRQ allocation was delayed until May, which caused significant disruption and uncertainty to trade.⁸³

iii. Auto quota administration

As with the agricultural TRQs, during the TRM, Members complained of the lack of transparency in China's auto quota allocation. They said that China failed to provide information about the importers that were granted allocations or about the breakdown between automobiles, auto kits requiring assembly in China, and parts (e.g., engines). The discrepancy between the quota actually allocated and the quota officially announced was a subject of debate. China had stated at the Market Access TRM that the entire \$7.9 billion quota would be allocated in 2002, and that, by August 2002, \$4.8 billion of the quota had been filled. However, Japan estimated that from April 2002, when the quota opened, to July 2002, only \$1.3 billion in auto exports had entered China.⁸⁴

iv. Tariffs

With respect to tariffs, at the Market Access TRM, Members complained that China had not adhered to the its bound *ad valorem* rates for some products in China's tariff schedule. In particular, Japan challenged China to justify the practice of assessing duties on photographic film

⁸³ See, e.g., *Questions to China from the United States in the context of the Transitional Review Mechanism pursuant to Section 18 of the Protocol of Accession of the People's Republic of China*, G/AG/W/51 (10 September 2002) & G/AG/W/51/Add.1 (7 October 2002).

⁸⁴ *Minutes of the Meeting Held on 23 September 2002*, Committee on Market Access, G/MA/M/33 (19 November 2002) at paras. 8.21 and 8.26.

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on a square meter basis, which, Japan claimed, boosted the actual tariff duties above the bound rates.⁸⁵ In addition, Canada asked China to supply a timeline for replacing its variable duty for newsprint with an *ad valorem* rate.⁸⁶

v. *VAT administration*

The TRM process raised a host of issues concerning China's VAT regime. The focus of Members' allegations was that China administered the VAT tax in a discriminatory manner, violating the requirement in Paragraph 2 of Article III of GATT 1994 that a WTO Member cannot impose taxes on imported products that are greater than those imposed on domestic products. The following VAT problems were identified at the TRM:

- China exempts all phosphate fertilizers except DAP from China's VAT, because DAP, according to the US, a product produced in the US, competes with similar phosphate fertilizers produced in China, such as MAP.⁸⁷
- China exempts from the VAT all nitrogen fertilizers except urea, while allowing a partial VAT rebate for domestic producers of urea.⁸⁸
- China charges domestically produced wheat and corn a maximum of 3% VAT, whereas imports of both commodities are subject to 13% VAT.⁸⁹
- As part of the support program for the integrated circuit industry, China is rebating 40 percent of a value-added tax to companies that export a certain percentage of their production. China also appears to reduce the value added tax charged to IC producers.⁹⁰

⁸⁵ *China's Transitional Review - Communication from Japan*, Committee on Market Access, G/MA/W/34 (30 August 2002).

⁸⁶ *China's Transitional Review - Questions from Canada*, Committee on Market Access, G/MA/W/36 (12 September 2002).

⁸⁷ *China's Transitional Review Mechanism - Questions from the United States to China Concerning Market Access*, Committee on Market Access, G/MA/W/35 (August 30, 2002) at para. 19.

⁸⁸ *Id.*

⁸⁹ *China's Transitional Review Mechanism - Questions to China from Canada*, Committee on Agriculture, G/AG/W/52 (16 September 2002).

⁹⁰ *Questions posed by the United States to the People's Republic of China*, Committee on Subsidies and Countervailing Measures, WTO Document G/SCM/Q2/CHN/2 (18 October 2002) at para. 7.

vi. Subsidies

During the TRM, the United States stated that China's continued export subsidies for corn raised a serious concern about whether China had complied with its WTO commitments to eliminate export subsidies on agricultural products. As noted by the US, according to some market reports, China had been selling corn in the world market at prices that were US\$ 20-30 per ton less than the world price.⁹¹

vii. Transparency

At many committees during the TRM, Members complained about China's poor record of providing opportunities for public comment before new or amended laws and regulations became effective. China agreed as part of its accession commitments to provide a reasonable period for comment to the appropriate authorities before such measures were implemented.⁹² However, Members alleged that China implemented the majority of its new laws and regulations without receiving comments by WTO Members and allowed only a very short comment period for a limited portion of new laws.⁹³

viii. Services

Numerous concerns were raised at the first TRM with regards to China's implementation of its commitments in opening up various service sectors. The following summaries review a number of service sectors concerning which Members made comments.

⁹¹ *Questions posed by the United States to the People's Republic of China, Committee on Subsidies and Countervailing Measures, WTO Document G/SCM/Q2/CHN/2 (18 October 2002) at para. 11.*

⁹² *Protocol on the Accession of the People's Republic of China, WT/L/432 (23 November 2001) at Item 2.C.2.*

⁹³ *TRM China - Financial Services - Canada's Questions to the People's Republic of China, S/FIN/W/20 (1 October 2002) at para. 13.*

Banking

The Chinese banking sector is generally viewed as a sector that could not survive open foreign competition. USTR noted in its 2002 report to Congress on China's WTO compliance that, since accession, China has decided to exercise extreme caution in opening up the banking sector.

At the TRM, Members charged that Chinese regulations in the banking sector issued shortly after accession undermined the market access opening for foreign banks. In particular, Members strongly opposed China's capital requirements for foreign banks' headquarters and branches on the basis that they far exceeded the international norms. According to China's *Regulations on the Administration of Foreign Financial Institutions*, and the implementing rules, capital requirements per branch range from RMB 100 million to RMB 600 million depending on business scope (the latter amount applying to entities carrying out the full range of banking services, with corporations and individuals, in RMB and foreign currency).⁹⁴

Members were also concerned about restrictive provisions in the pending *Regulations on Interbank Borrowing*. The draft of the regulations, issued in November 2002, stipulates that no more than 40 percent of local currency liabilities of foreign banks can be financed by borrowing from Chinese banks. Members argued that this cap could severely hamper the ability of foreign banks to provide loans in Chinese currency, especially those banks that are not planning to establish large RMB deposit bases.⁹⁵

⁹⁴ See, e.g., *Communication from the European Communities and their Member States - TRM China - Financial Services*, S/FIN/W/18 (23 September 2002) at para. 3.

⁹⁵ See, e.g., *TRM China - Financial Services - Canada's Questions to the People's Republic of China*, S/FIN/W/20 (1 October 2002) at para. 7.

Insurance

Prior to China's entry into the WTO, access to China's insurance market was a thorny issue for foreign insurance service providers. A common complaint was that qualified insurance companies were unable to acquire a license. Upon China's accession, foreign insurers were poised to capitalize on China's market access commitments, but many have continued to complain about the restrictions in China's regulatory mechanism for the insurance sector. During the TRM at the Committee on Financial Services, the United States, joined by Japan, the EC and Canada, raised the following concerns:

- The China Insurance Regulatory Commission (CIRC) takes the position that non-life firms already established in China, wishing to open branches, cannot do so unless they first establish as a subsidiary. China's insistence that subsidiaries be first established goes against the commitment to allow non-life insurance firms to establish as branches and to allow sub-branching in accordance with the lifting of the geographic restrictions.
- China is requiring a multi-step application process for the establishment of insurance companies, which goes against China's commitment not to impose licensing requirements that act as a barrier to market access. China's Insurance Regulatory Commission still asks foreign companies to apply for a license, a step which China should remove from the process.
- The capital requirement for foreign insurance companies is unreasonably high, given the size and scope of China's insurance market.⁹⁶

Auto Financing

China committed to allow foreign companies to provide auto financing in China upon accession, that is, starting December 11, 2002. China, however, has been lagging in issuing the final regulations on auto financing. At the TRM in the Committee on Financial Services, the

⁹⁶ See, e.g., *Transitional Review Mechanism Pursuant to Section 18 of the Protocol on Accession of the People's Republic of China - Questions from the United States to China Concerning Financial Services*, S/FIN/W/19 (1 October 2002).

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United States and Japan pushed China for a timeline on finalizing the rules, which they viewed as critical to ensuring *de facto* market access for foreign auto suppliers in China.

Express Courier

After WTO accession, China issued two notices concerning express delivery services. The first, Notice No. 629, was issued on December 24, 2001 by MII, MOFTEC and SPO. The second, Notice No. 64, was issued in February 2002 by the SPO. Members, such as the United States, alleged that these notices placed restrictions on the operation of foreign express delivery companies in China and ran counter to China's commitment not to roll back on the level of market access for services that existed prior to accession.⁹⁷

On September 5, 2002, MII, MOFTEC and SPO issued a new notice, No. 472, which was similarly criticized at the Service Council TRM. The new notice (*i.e.*, *Supplemental Notice on the Engagement in Postal and Delivery Services for Cross-border Letters and Material of Letter in Nature*) requires that foreign-invested express couriers already licensed by MOFTEC now obtain entrustment certificates from the postal authorities. The US and the EC both challenged China on the rationale for the entrustment requirement in light of China's commitment not to reduce market access by imposing conditions on ownership, operation or scope of activities that are more restrictive than those that were in place before accession.⁹⁸

⁹⁷ *US to Raise Two China Problems in WTO Services Council Next Week*, INSIDE US-CHINA TRADE, March 13, 2002.

⁹⁸ *See, e.g., Transitional Review Mechanism Pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China Concerning Services*, S/C/W/212 (1 October 2002) at paras. 14-18.

Legal Services

Two legislative enactments govern the opening up of the legal services sector in China. They are the *Regulations on the Management of Representative Offices of Foreign Law Firms* (promulgated December 27, 2001) and the implementing rules (issued July 4, 2002). These two laws were subject to a litany of criticism during the TRM with respect to China's accession commitments. Members, such as the US and the EC, charged that the new regulations imposed limitations on the activities of representative offices which appeared to be more restrictive than provided for in China's services schedule. Their complaints included the following points:

- Article 4 of the *Regulations* gives the Ministry of Justice permission to determine whether there is a need for a representative office based on demand and other factors. This provision violates prohibitions in GATS against imposing economic needs tests in a service sector in which a Member has made market access commitments.
- Article 9 of the *Regulations* allows the relevant authorities a total of nine months to consider an application to establish a representative office in China. This period is excessively long, given the requirement in the service schedule that "Decisions would be taken promptly on all applications."
- Article 18 of the *Regulations* prohibits a representative from assuming representation in two or more representative offices, which increases the burdens on foreign law firms.
- Article 10 of the *Implementing Rules* requires that the most recently established representative office of a foreign law firm has practiced for three years before the firm may apply to open another representative office. This provision is not consistent with China's commitment to remove quantitative limitations on foreign law firms within one year after accession.
- Article 33 of the *Implementing Rules* potentially restricts the ability of foreign law firms to advise their clients on the impact of the Chinese legal environment, further limiting the already limited business scope. For the definition of information on the impact of the Chinese legal environment, they

give a very restrictive interpretation by which specific opinions or determinations on the application of PRC law may not be provided.⁹⁹

3. Experience in the second review

(a) Procedural changes if any

When the first TRM was concluded, some Members expressed the hope that efforts would be made to improve the process for the second TRM, especially with respect to the submission of questions and responses. However, no Member put forward any specific plan to develop new procedures for a more efficient and smooth TRM process. The likely reason that no such proposals were put forward is that, because consensus is required among WTO Members to bring any changes to the existing process, China, likely, would have opposed any steps to tighten the process, as the following press report illustrates:

More specifically, informed trade sources this week said that China has made it very clear that it would oppose any move to tighten the TRM process next year or any time in the future. In addition, these sources said, China has a clear preference for easing the TRM process if possible, which could be done by folding it into the regular Trade Policy Review Mechanism (TPRM). This process is a largely formalistic exercise in which the WTO secretariat prepares a report on a country's trade system and the country then provides its own presentation of its trade rules to WTO members.¹⁰⁰

As anticipated, the second TRM proceeded in a manner very much like the first, without any procedural changes. The review at each committee was conducted at, and limited to, a regular committee meeting, where China explained the efforts it had made to honor its

⁹⁹ *Id.* at paras. 3-11.

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obligations and provided oral responses to questions either submitted in advance of the review by other Members or raised by Members at the meeting. Just as in the first review, China also offered to hold informal consultations with Members to address any further concerns and unresolved issues. The committee reports detailed the interaction among Members at the meeting but issued no recommendations on China's compliance efforts.

As in the first TRM, Members expressed the view that the TRM process was one of great importance. Taking into account the experience of the first TRM, Members such as the EC made special efforts to ensure a more effective and meaningful review. As noted by the EC representative at the Council for Trade in Goods:

The EC had decided this year to 1) as last year, transmit the questions well in advance of each meeting (typically six weeks); 2) focus on a limited number of priorities, and 3) raise only issues discussed already a number of times in the WTO committees or in bilateral meetings and therefore well-known to the Chinese side. The objective of the EC was to have in each subsidiary body under the Council for Trade in Goods a meaningful discussion and detailed replies from the Chinese side to this limited number of questions.¹⁰¹

Compared to the first TRM, there was less debate over procedural issues at the second TRM. Recognizing the limitations in the existing TRM framework, and the unlikely prospect of procedural changes, Members devoted more time and energy to the discussion of substantive implementation issues. Nevertheless, the topic of written responses was again raised in a few committees (*e.g.*, AD, SCM, LIC). The United States raised the point that written questions and answers were the most practical and appropriate form to accurately transmit technical

¹⁰⁰ *WTO quietly approves China's first compliance review without recommendation*, INSIDE US-CHINA TRADE, December 11, 2002.

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information.¹⁰² China, in response, reiterated its position that there was no legal obligation to provide written answers, and that the information it submitted in advance of the review and the oral responses it gave at the meetings were sufficient for a meaningful review.¹⁰³

It is noteworthy that a new controversy arose at the Committee on Import Licensing concerning whether responses by China were required at all.

A second representative of China said that, in his view, according to Section 18 of the Protocol of accession under which the transitional review was conducted, China had no obligation to answer all the specific questions. He actually wondered if this question and answer process had to be a part of this transitional exercise at all and, therefore, wished that this transitional review be conducted strictly in accordance with section 18 of the Protocol rather than, as some Members requested, in a way that went beyond Section 18. He hoped that the Chairperson as well as Members would abide by this understanding.

* * *

Of course, if Section 18 clearly specified that questions and answers had to be an integral part of this exercise, then China would do it, but since Section 18 did not specifically say that, China then had no obligation to take part in this so-called questions and answers part of the exercise.¹⁰⁴

The United States responded as follows:

The representative of the United States said that this was disturbing for him, because, at least in his recollection, this was the first time that this issue had arisen. As he had said before, there had been a controversy in the past about written responses but he did not recall there being a controversy with respect to providing oral responses; in fact, he thought that in 2002 China had done a very

¹⁰¹ *Report of the Council for Trade in Goods on China's Transitional Review*, Council for Trade in Goods, G/L/664 (4 December 2003) at para. 3.3.

¹⁰² *Chair's Report to the Council for Trade in Goods on Transitional Review of China*, Committee on Subsidies and Countervailing Measures, G/SCM/111 (18 November 2003) at Annex, para. 4.

¹⁰³ *Id.* at Annex, para. 27.

¹⁰⁴ *Report to the Council for Trade in Goods on China's Transitional Review*, Committee on Import Licensing, G/LIC/11 (29 October 2003) at paras. 3.19 and 3.24.

good job of trying to respond to all of the questions that were put to it as part of the transitional review. It was clear that Section 18 of China's Protocol said that questions might be posed to China. It did not specifically say that China had to answer those questions, but there simply could be no other interpretation of the clear intention of Section 18. What sort of exercise would Members be engaged in if questions were allowed to be posed, but China was free to simply ignore them? * * * He wished to state that he did not want to make this a contentious exercise, but he felt that, under Section 18 of the Protocol, Members had a right to receive responses to the questions that Section 18 said they could pose.¹⁰⁵

The debate on this new controversy was short-lived, however, as Members focused their attention on more specific questions dealing with implementation issues.

(b) Data supplied by China at beginning of review

As with the first TRM, China submitted a large amount of information, as required under Annex 1A of Paragraph 18 of the Protocol of Accession, to various subsidiary bodies in advance of the second TRM. (A list of the Chinese submissions in the second TRM is attached in Appendix 2.) The submissions do not differ from those during the first review in terms of timing, format, and reactions from Member countries. With respect to substance, on some items China provided no new information because policies or regimes had already been put in place to fulfil certain commitments during the first year, while, on other items, China described its ongoing efforts as some commitments phased in during the second year and others would be phasing in soon.

Viewed quantitatively, a comparison of the information submitted in the first TRM with the information submitted in the second TRM sheds light on the progress, if any, China has made

¹⁰⁵ *Id.* at 3.25.

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in meeting certain WTO obligations, e.g., market access expansion. The following series of tables summarize the information submitted in both reviews on the following issues: handling of cases of non-uniform application of laws and regulations, tariff rate quota administration, method of customs valuation, state of play in the licensing application in service sectors, and intellectual property rights enforcement.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

1. Structure and Powers of the Government/Authority of Sub-Central Governments/Uniform Administration

- (b) establishment and operation (upon accession) of the mechanism pursuant to Section 2(A), paragraph 4 of the Protocol under which individuals and enterprises can bring cases of non-uniform application of the trade regime to the attention of national authorities.

Time Period	Cases of non-uniform application of laws, regulations, measures, etc.
Dec 2001-Oct 2002	33 cases brought; 9 resolved; 24 being processed, of which 1 is related to trade
Nov 2002-Aug 2003	35 cases brought, among which 4 are relevant to trade and are under consideration

Sources: *Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Sections I and III of Annex 1A of the Protocol, WT/GC/68 (25 November 2002); Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Sections 1A of the Protocol, WT/GC/75 (5 December 2003).*

IV. POLICIES AFFECTING TRADE IN GOODS

1. Tariff Rate Quotas

- (a) Administration of TRQs on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements and evidence of a consistent national allocation (and reallocation) policy
 - (iv) fill rates for the quota or TRQ (in %).

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Product	2002 (by July 31)	2003 (by Aug 31)	Product	2002 (by July 31)	2003 (by Aug 31)
Wheat	5.9	2.4	Cotton	7.6	72.8
Maize	0.1	0	Wool	37	36.6
Rice	3.3	4.1	Wool Top	30	24.5
Soybean oil	3.4	32.3	Urea	51.1	7.47
Rapeseed oil	2.2	6	NPK	23.5	50.7
Palm oil	34	60.8	DAP	77.2	33.34
Sugar	40	30.1			

Sources: *China's Transitional Review Mechanism - Information provided by China in accordance with Annex 1A of the Protocol on the Accession of the People's Republic of China, G/MA/W/39 (19 September 2002); Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Information Required by Annex 1 of the Protocol, G/MA/W/52 (16 October 2002).*

IV. POLICIES AFFECTING TRADE IN GOODS

9. State Trading Entities

- (a) Progressive abolishment of state trading in respect of silk measures, increasing and extending trading rights, granting the right to trade to all individuals no later than 1 January 2005.

Time Period	Number of enterprises engaged in export trade of silk
Dec 2001 - Nov 2002	Increased from 43 to 99
Dec 2001 - Nov 2003	Increased from 43 to 145

Sources: *Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Annex 1A, G/C/W/438 (20 November 2002); Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Annex 1A, G/C/W/474 (24 November 2003).*

IV. POLICIES AFFECTING TRADE IN GOODS

4. Customs Valuation

- (a) the use of valuation methods, other than the stated transaction value.

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Time Period	Rate of applying transaction value in customs value determinations
Jan 2002 - Sept 2002	94.89%
Jan 2003 - July 2003	97.56%

Sources: Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Annex 1A, G/VAL/111 (11 October 2002); Transitional Review under Article 18 of the Protocol of Accession of the People's Republic of China - Information Required in Annex 1A, G/VAL/W/125 (24 September 2003).

V. POLICIES AFFECTING TRADE IN SERVICES

(e) foreign and domestic suppliers in sectors where specific commitments have been undertaken indicating the state of play of licensing applications on sector and sub-sector levels (accepted, pending, rejected).

	Services sector or sub-sector	State of play of licensing applications of foreign services suppliers ¹					
		Approved		Pending		Rejected	
		2002 ²	2003 ³	2002 ²	2003 ³	2002 ²	2003 ³
	II. SPECIFIC COMMITMENTS						
2	1. BUSINESS SERVICES	23	17	5	0	0	0
	A. Professional Services						
	a. Legal Services (CPC861, excluding Chinese law practices)						
3	b. Accounting, auditing and bookkeeping services (CPC 862)	17	9	1	4	0	0
	c. Taxation services (CPC 8630)						
4	d. Architectural services (CPC 8671)	1	1	3	3	0	0
	e. Engineering services (CPC 8672)						
	f. Integrated engineering services (CPC 8673)						
	g. Urban planning services (CPC 8674)						
5	h. Medical and dental services (CPC 9312)	46	14	4	6	0	0
6	B. Computer and Related Services	n.a. ⁴	n.a.	n.a.	n.a.	n.a.	n.a.
7	D. Real Estate Services	0	n.a.	0	n.a.	0	n.a.
8	F. Other Business Services	26	10	0	0	0	0
	a. Advertising Services (CPC 871)						
9	c. Management Consulting services (CPC865)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
10	e. Technical testing and analysis services (CPC 8676) and freight inspection covered by CPC 749, excluding statutory inspection services for freight inspection services	8	0	1	0	0	0
11	f. Services incidental to agriculture, forestry, hunting and fishing (CPC 881 and 882)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
12	m. Related scientific technical consulting services (CPC 8675)	1	1	0	0	0	0
	- Onshore oil-field services						

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	Services sector or sub-sector	State of play of licensing applications of foreign services suppliers ¹					
		Approved		Pending		Rejected	
		2002 ²	2003 ³	2002 ²	2003 ³	2002 ²	2003 ³
13	- Offshore oil-field services, Geological, geophysical and other scientific prospecting services (CPC 86751) Sub-surface surveying service (CPC 86752)	7	1	2	1	0	0
14	p. Photographic services (CPC 875)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
15	q. Packaging services (CPC 876)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
16	s. Convention services (CPC 87909)	0	0	0	0	0	0
17	t. Translation and interpretation services (CPC 87905)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
18	- Maintenance and repair services (CPC63, 6112 and 6122) - Maintenance and repair services of office machinery and equipment including computers (CPC 845 and 886)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
19	- Rental and leasing services (CPC 831, 832 excluding CPC 83202)	0	0	0	0	0	0
20	2. COMMUNICATION SERVICES B. Courier Services (CPC 75121, except for those currently specifically reserved to Chinese postal authorities by law)	35	16	6	10	0	0
21	C. Telecommunication Services	8	1	0	2	0	0
22	D. Audiovisual Services - Video, including entertainment software and (CPC 83202), distribution services - Sound recording distribution services	1	1	2	2	0	0
23	- Cinema Theatre Services	4	2	0	1	0	0
24	3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (CPC 511, 512, 513, 514, 515, 516, 517, 518)	164 ⁵	112	0	0	0	0
25	4. DISTRIBUTION SERVICES A. Commission Agents' Services (excluding salt, tobacco) B. Wholesale Trade Services (excluding salt, tobacco) C. Retailing Services (excluding tobacco)	53	9	9	9	0	0
26	5. EDUCATIONAL SERVICES	50	36	2	0	0	0
27	6. ENVIRONMENTAL SERVICES	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
28	7. FINANCIAL SERVICES A. Insurance services	9	3	n.a.	23	n.a.	0
29	B. Banking Services	58	7	16	34	18	0
30	- Motor vehicle financing by non-bank financial institutions	0	0	0	0	0	0
31	- Securities	10	0	4	4	1	0
32	9. TOURISM AND TRAVEL RELATED SERVICES A. Hotels	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
33	B. Travel Agency and Tour Operator (CPC 7471)	2	2	9	0	0	0

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	Services sector or sub-sector	State of play of licensing applications of foreign services suppliers ¹					
		Approved		Pending		Rejected	
		2002 ²	2003 ³	2002 ²	2003 ³	2002 ²	2003 ³
34	11. TRANSPORT SERVICES A. Maritime Transport Services - International transport (CPC 7211 and 7212 less cabotage transport services) H. Auxiliary Services a. Maritime cargo-handling services (CPC 741) d. Container station and depot services e. Maritime agency services B. Internal Waterways Transport b. Freight transport (CPC 7222)	n.a.	0	n.a.	0	n.a.	0
35	C. Air Transport Services d. Aircraft repair and maintenance services (CPC 8868)	351	1	10	0	9	0
36	- Computer Reservation System services	1	0	0	1	0	0
37	E. Rail Transport Services - Freight transportation by rail (CPC 7112)	0	0	0	0	0	0
38	F. Road Transport Services - Freight transportation by road in trucks or cars (CPC 7123)	56	30	4	15	0	0
39	H. Services Auxiliary to all Modes of Transport - Storage and warehousing services (CPC 742)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
40	- Freight forwarding agency services (CPC 748 and 749 excluding freight inspection)	35	16	6	10	0	0

Sources: *Communication from the People's Republic of China - Notification under Section 18 of China's Protocol of Accession to the Council for Trade in Services, S/C/W/218 (22 October 2002); Communication from the People's Republic of China - Transitional Review Mechanism under Section 18 of the Protocol on the Accession of the People's Republic of China - Information required by Annex 1A, S/C/W/234 (1 December 2003).*

- Notes:
1. This table gives the state of play of applications of foreign services suppliers from the date of China's accession to the WTO until 31 July 2003.
 2. The "2002" column covers the period from accession to July 31, 2002.
 3. The "2003" column covers the period from August 1, 2002 to July 31, 2003.
 4. n.a. = not available, due to lack of efficient statistics collection channel.
 5. This particular number is the total approvals granted for foreign services suppliers in this sector, instead of since China's WTO accession.

VI. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- (b) enhance IPR enforcement efforts through the application of more effective administrative sanctions as described in the Report.

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Topics	2001	2002
Trademark law enforcement	<ul style="list-style-type: none"> • Dealt with 41,163 cases in total, among which 22,813 cases were trademark infringements and 18,350 cases were in relation to other violations • Confiscated 250 million illegal trademark signs and 14,004 moulds, blocks and other tools directly used for infringing production • Destroyed 2227.74 tons of infringing products; imposed fines totaling RMB 210 million • Transferred 86 cases to criminal procedures, involving 88 people 	<ul style="list-style-type: none"> • Dealt with 39,105 cases of all kinds • Took over and removed 153 million illegal marks; captured 14,882 pcs of tools, such as mould and printing block • Destroyed 4,183.64 tons of counterfeit goods; imposed fines amounting to RMB 214 million • Transferred 59 cases to judicial authorities to investigate criminal liabilities, involving 78 people • In the case of protection of undisclosed information, investigated and dealt with 87 cases concerning infringing of trade secrets (of which the total value amounted to RMB 3,287,700), confiscated RMB 27,200 and imposed fines totaling RMB 1,881,800
Copyright law enforcement	<ul style="list-style-type: none"> • Received 4,416 cases in total with 4,306 cases concluded; 3,607 cases concluded with imposition of a fine upon the infringer and 633 cases concluded with mediation • Transferred 66 cases to criminal procedures 	<ul style="list-style-type: none"> • Accepted 6,107 cases, among which 95.3% closed, 5,350 cases leading to penalties, 721 cases settled through intermediation • Transferred 136 cases to judicial proceedings • Took over more than 67,900,000 pcs of pirated products, including 20,020,000 volumes of books, 1,350,000 periodicals, 7,330,000 discs of electronic publication, 5,960,000 discs of software and other pirated products 6,150,000 pcs
Law enforcement at border	<ul style="list-style-type: none"> • Investigated and dealt with 330 cases involving infringements with the total value amounting to RMB 134,900,000; 297 cases involving export and import goods bearing counterfeit trademarks 	<ul style="list-style-type: none"> • Investigated and dealt with 569 cases involving infringement the total value of which amounted to RMB 95,390,000 • The General Administration of Customs verified, approved and recorded 844 items of IPR protection at Customs

Sources: *Transitional Review Mechanism of China - Information Required in Annex 1A*, IP/C/W/382 (16 September 2002); *Transitional Review Mechanism of China*, IP/C/W/415 (18 November 2003).

(c) Issues identified by WTO Members

In the context of the second TRM, 7 Members submitted a total of 44 documents posing questions to China respecting implementation of its WTO commitments in the second year of WTO membership. This was a notable decline in the number of submissions of questions from the first TRM (where there were 74 submissions from 13 Members). Many first-year implementation issues were again subjects of serious concerns at the second TRM. Following the first TRM, while progress was made in some areas, such as TRQ administration and capitalization requirements in some service sectors, there was no positive action by China in such areas as the auto quota, subsidies, and VAT administration. In addition, new concerns arose as Year-2 commitments phased in, with trading rights topping the list. (A summary table of submissions of questions to China by other WTO Members in the second TRM is contained in Appendix 4; Appendix 6 contains a listing of questions and concerns raised by WTO Members in each committee at the second TRM).

The following table shows the number of submissions of questions by WTO Members to the relevant committees and councils in the second TRM.

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Summary Table of Submissions of Questions to China by WTO Members in the Context of the Second TRM

Committees / Councils	Number of Submissions by Concerned Members							Committee Subtotal
	AUS	CAN	EEC	JPN	MEX	TPKM	USA	
Agriculture						1	1	2
Antidumping Practices				1			1	2
Balance of Payments Restrictions						1		1
Customs Valuation						1	1	2
Financial Services		1	1	1		1	1	5
Import licensing			1	1		1	1	4
Market Access			1	1			1	3
Rules of Origins						1		1
Safeguards				1				1
Sanitary and Phytosanitary Measures			1			1	1	3
Subsidies and Countervailing Measures			1		1		1	3
Technical Barriers to Trade			1	1			1	3
Trade-Related Investment Measures			1				1	2
Council for Trade in Goods			1	1			1	3
Council for Trade in Services	1		1	1		1	1	5
Council for Trade-Related Aspects of Intellectual Property Rights			1	1		1	1	4
Subtotal by Country	1	1	10	9	1	9	13	Total 44

Notes:

AUS = Australia; CAN = Canada; EEC = The European Communities; JPN = Japan; MEX = Mexico; USA = The United States of America;
TPKM = The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following is a summary of major concerns that were highlighted at the second TRM with respect to the following areas: (i) trading rights; (ii) auto quotas and auto policy; (iii) tariff rate quota administration; (iv) intellectual property rights protection; (v) subsidies; (vi) VAT administration; (vii) China Compulsory Certification (CCC) system; and (viii) services.

i. Trading rights

At the Committee on Market Access, Import Licensing, and the Goods Council, the US, EC and Japan voiced their concerns over China's implementation of its commitment to liberalize trading rights. These members alleged that China had fallen behind with regard to its trading rights commitments insofar as they related to foreign-invested enterprises. The major concerns and questions raised included the following:

- Under the *Provisional Rules on the Establishment of Sino-Foreign Foreign Trade Companies* adopted by China in January 2003, China requires prior experience for both the Chinese and foreign joint venture partners and

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imposes a minimum capital requirement, which go against China's commitment under paragraph 83(a) of the Working Party Report.¹⁰⁶

- Do the *Provisional Rules* apply only to trading joint ventures, or all joint ventures? Can joint ventures which were already established in China before the *Provisional Rules* came into force obtain trading rights under the same conditions as joint ventures established after the promulgation?¹⁰⁷
- What is the status of the revision to the *Foreign Trade Law of China* to reflect China's commitments on trading rights?¹⁰⁸
- What is China's schedule to implement its commitment to grant trading rights for joint venture enterprises with majority share by December 11, 2003? What is China's schedule to implement the obligation to make trading rights available automatically to all enterprises in China by December 11, 2004?¹⁰⁹

ii. Auto quotas and auto policy

At the Committee on Import Licensing, Market Access, TRIMS, and the Services Council, Members submitted a wide range of questions with respect to China's auto quota, auto financing,¹¹⁰ and the planned new automobile industrial policy regarding which China had circulated a draft for public comment in April 2003.

On auto quota:

- The quota quantities allocated is much smaller than quantities officially announced. According to Japan, only \$3.85 billion of a \$7.94 billion auto quota from March 2002 to April 2003 had been filled, and based on imports in

¹⁰⁶ See, e.g., *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China Concerning Market Access*, G/MA/W/51 (13 October 2003).

¹⁰⁷ See, e.g., *China's Transitional Review Mechanism - Communication from the European Communities*, G/MA/W/49 (9 September 2003).

¹⁰⁸ See, e.g., *China's Transitional Review Mechanism - Communication from Japan*, G/MA/W/50 (11 September 2003).

¹⁰⁹ See, e.g., *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China Concerning Market Access*, G/MA/W/51 (13 October 2003).

¹¹⁰ Questions regarding auto financing are discussed in section "viii. Services," *infra*.

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the first quarter of 2003, it appeared that only \$4.84 billion of a \$9.125 billion quota for 2003 would be filled.

- It is reported that China controls the number of import licenses to be granted by category. Especially, the number of import licenses granted to cars of 2,000 cc or less displacement in the sedan category is small.
- What is the status of the implementation in 2003 of the provision that the number of quota holders not having imported their full allocation would receive a proportional reduction in their quota allocation in the subsequent year unless the quantity is returned for reallocation by September 1?¹¹¹

On auto policy:

- What is the status on the planned new automobile industrial policy and its WTO compatibility?¹¹²
- What is the justification for the provision in the draft policy that discourages the importation of auto parts, and restricts imports of CKDs?¹¹³
- What is the justification for the provision on automobile dealerships in the draft policy that would require separate distribution networks for imported and domestic automobiles?¹¹⁴

On other issues in the auto sector:

- What are the legal steps China has taken, or plans to take to completely remove all restrictions on the categories, types or models of motor vehicles permitted for production by December 11, 2003?
- What are the legal steps China has taken to raise the limit within which investments in motor vehicle manufacturing could be approved at the

¹¹¹ See, e.g., *China's Transitional Review Mechanism - Communication from Japan*, G/MA/W/50 (11 September 2003).

¹¹² See, e.g., *China's Transitional Review Mechanism - Communication from the European Communities*, G/MA/W/49 (9 September 2003).

¹¹³ *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China concerning Market Access*, G/MA/W/51 (13 October 2003).

¹¹⁴ See, e.g., *id.*

provincial level, which were scheduled to take place starting December 11, 2002?¹¹⁵

iii. TRQ administration

China's TRQ administration was an issue of serious concern to Members during the first TRM. The major complaints with China's TRQ administration may be summarized as follows:

- China maintains a sub-quota system for processing trade;
- China maintains cumbersome procedures for quota applicants;
- China fails to notify foreign exporters of the names of quota holders;
- China fails to allocate quotas in commercially viable shipping quantities.

After the first TRM, Members such as the US pushed hard for changes in China's TRQ regime through various channels. Due to China's continued failure to acknowledge compliance problems in its TRQ administration, the US considered filing a WTO dispute settlement case against China (which would have been the first such case against China).¹¹⁶ Finally, China published for comment draft revisions to its *Interim Rules on Agricultural Tariff-Rate Quota Administration* on July 31, 2003. At the Committee on Agriculture, the US noted that the draft Rules reflected several improvements from the prior measures: for example, the draft Rules eliminated the separate tariff quota for processing trade (*i.e.*, imports of goods that must be processed and re-exported).¹¹⁷ However, the US still found China's TRQ regime unsatisfactory in a number of areas, such as:

- The draft Rules still provide for restrictions relating to processing trade and, in particular, application of out-of-quota tariffs and other penalties when a

¹¹⁵ *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China Concerning TRIMS*, G/TRIMS/W/32 (24 September 2003) at paras. 2 and 3.

¹¹⁶ *US Warns China of Possible WTO Dispute Case Against Farm TRQs*, INSIDE US-CHINA TRADE, Oct 2, 2002.

¹¹⁷ *Summary Report of the Meeting Held on 25 September 2003*, Committee on Agriculture, G/AG/R/36 (21 October 2003) at para. 10.

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processing trade enterprise sells agricultural goods without approval in the domestic market that are imported pursuant to a tariff quota allocation.

- China's TRQ administration still lacks transparency in terms of the information regarding tariff quota holders.¹¹⁸

iv. Intellectual property rights protection (IPR)

As in the first TRM, Members raised numerous concerns in the second TRM at the Council for TRIPS regarding the protection of intellectual property rights in China. The EC stated in its submission that, “in the field of enforcement of IPR, the situation has not substantially improved in comparison with last year” and “China’s share of the world’s trade of counterfeit and pirated goods continues to increase annually.”¹¹⁹ The following is a summary of major concerns raised and questions posed by Members to China:

- It is hoped that the protection of well-known trademarks in China would be strengthened without discrimination on the basis of nationality and that approval procedures should be simplified. What is the number of domestic and foreign well-known trademarks recognized to date?¹²⁰
- The problem of delays in granting patents has not yet been resolved, particularly in the area of advanced technology such as liquid-screen displays, PCs, and IC cards. With such delays, license agreements could not be concluded for investment in China and it is impossible to obtain compensation for damages caused by counterfeit goods. What is the current status of patent pendency at the State Intellectual Property Office with respect to both foreign and domestic patent applications?¹²¹

¹¹⁸ *Id.* at para. 10-15.

¹¹⁹ *Transitional Review Mechanism of China, Communication from the European Communities, IP/C/W/413* (12 November 2003) at paras. 3 and 5.

¹²⁰ *See, e.g., Transitional Review Mechanism of China - Communication from Japan, IP/C/W/410* (7 November 2003) at para. 4.B.; *Transitional Review under Section 18 of the Protocol of the Accession of the People's Republic of China - Report to the General Council by the Chair, IP/C/31* (10 December 2003) at para. 60.

¹²¹ *Id.* at para. 4.C.; *id.* at para. 59.

- Localism is a major obstacle to IPR protection in China. What steps have been taken to eliminate localism that encourages a soft approach to the manufacture of counterfeit or pirated goods by local firms?¹²²
- In addition, local authorities must enhance their transparency in terms of the provision of local rules or regulations regarding IPR as well as any local enforcement decisions, which may also help facilitate interagency cooperation, cooperation with national authorities, and closer work with rights holders. What are the national laws that mandate greater transparency by local authorities in these areas?¹²³
- Counterfeit and pirated goods are still being exported from China. What border enforcement efforts have been adopted by China Customs and what is the status of operation of regulating such exports?¹²⁴
- Given the actual degree of IPR infringement in China, the number of cases that lead to criminal prosecutions is extremely small. China must pursue criminal prosecutions more aggressively and apply more deterrent penalties. The present standard for prosecuting criminal cases, which includes a threshold of a certain level of sale proceeds from counterfeit goods, should be changed.¹²⁵

v. Subsidies

At the Committee on Subsidies and Countervailing Measures, the United States, the EC, and Japan expressed concerns about various issues including China's failure to notify its subsidy programs, export subsidies, and price control (in particular, vis-à-vis state owned enterprises). Major concerns included the following:

- China has not made a subsidy notification as required by Article 25.1 of the SCM Agreement since joining the WTO nearly two years ago.¹²⁶

¹²² *Transitional Review Mechanism of China - Communication from Japan*, IP/C/W/410 (7 November 2003) at para. 4.D.

¹²³ *Transitional Review Mechanism of China - Communication from the United States*, IP/C/W/414 (12 November 2003) at para. 10.

¹²⁴ *See, e.g., Transitional Review Mechanism of China - Communication from Japan*, IP/C/W/410 (7 November 2003) at para. 4.D.

¹²⁵ *Id.*

¹²⁶ *See, e.g., Subsidies - Questions Posed by the United States to the People's Republic of China*, G/SCM/Q2/CHN/6 (27 October 2003) at para. 1.

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- China stated at the first TRM that the program of subsidies provided to certain state-owned enterprises running at a loss had been eliminated in 2001. However, a recent Chinese press report suggests that China is currently working to eliminate the program, indicating that the program is still in existence.¹²⁷
- As indicated from the website of "Shanghai Foreign Investment Center," China grants preferential policies to export oriented enterprises. One of the benefits is the preferential supply of water, electricity, transport and telecommunication at the same price as state owned companies, which indicates that China maintains different pricing for energy use depending on whether the company is state-owned.¹²⁸

In addition, at the Committee on Agriculture, the United States once again voiced its concern over China's continued export subsidies on corn.¹²⁹

vi. VAT

At the TRM in the Market Access Committee, the US restated its concerns regarding China's discriminatory application of the VAT tax on particular products, as that issue remained unresolved from the first TRM. These concerns were:

- China maintains a differential treatment on the VAT applied to semiconductors.
- China exempts all phosphate fertilizers except DAP from VAT, which is produced in the US and competes with similar domestic Chinese fertilizers.¹³⁰

¹²⁷ *Subsidies - Questions Posed by the United States to the People's Republic of China*, G/SCM/Q2/CHN/6 (27 October 2003) at para. 5.

¹²⁸ *Subsidies - Questions Posted by the European Communities to the People's Republic of China*, G/SCM/Q2/CHN/5 (2 October 2003) at Q-2 and Q-3.

¹²⁹ *Summary Report of the Meeting Held on 25 September 2003*, Committee on Agriculture, G/AG/R/36 (21 October 2003) at paras. 16-20.

¹³⁰ *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol of the Accession of the People's Republic of China - Questions from the US to China Concerning Market Access*, Committee on Market Access, G/MA/W/51 (13 October 2003) at paras. 2 and 3.

vii. China Compulsory Certification System (CCC)

At the TRM held by the Committee on Technical Barriers to Trade, some Members, including the EC, raised concerns over a new compulsory product certification system in China. The new system, known as the China Compulsory Certification (CCC) system, came into effect on August 1, 2003, when it replaced two former compulsory certification systems for domestic and imported products, respectively.¹³¹ Members expressed the following concerns regarding China's implementation of the CCC system:

- The list of products subject to mandatory certification includes spare parts and components, unless they are incorporated in whole machines. This creates trade difficulties, especially when spare parts are supplied separately for the purposes of repair or maintenance, or when components are assembled in China.¹³²
- What are the procedures to ensure that confidentiality of technical information about products required for conformity assessment is dealt with in a manner that protects legitimate commercial interests at both the national and local levels?¹³³
- Do fixed fees (covering the application, licensing and checking of accompanying English documents) and conformity assessment fees reflect the real cost of certification? Do these fees discriminate between domestic and imported products?¹³⁴

¹³¹ As noted by the Chinese representative at the TBT Committee at the first TRM, the CCC system is designed to ensure national treatment for imported products. Under the new system, four unifications are realized for both imports and domestic products (*i.e.*, unified catalogue, unified set of applicable technical regulations, standards and implementation procedures, unified certification mark and unified fee charge standard.) *See Minutes of the Meeting Held on 17 October 2002*, Committee on Technical Barriers to Trade, G/TBT/M/28 (19 November 2002).

¹³² *Transitional Review Mechanism Pursuant to Paragraph 18 of the Protocol on the Accession of the People's Republic of China - Submission by the European Communities to the TBT Committee*, G/TBT/W/227 (6 October 2003) at para. 6.

¹³³ *Id.* at para. 9.

¹³⁴ *Id.* at para. 7.

- How far will foreign conformity assessment be taken into consideration in China's procedures, notably in sectors where similar requirements apply?¹³⁵
- Will China notify changes to the CCC Mark certification scheme which permit applicants to conduct factory self-inspection and to proceed with CCC Mark issuance on an interim basis while awaiting a full factory inspection by designated certification bodies?¹³⁶

viii. Services

As with the first TRM, Members raised many concerns in the second TRM over China's implementation of its commitments in the services sector. Some of the major issues raised with regarding a number of the sectors are summarized below.

Banking

Market access restrictions in China's banking sector, which were noted at the first TRM, were again highlighted at the second TRM.

- Pursuant to the *Regulation on the Administration of Foreign-Invested Financial Institutions* and the *Detailed Implementing Rules for the Regulations on the Administration of Foreign-Invested Financial Institutions*, China imposes minimum capital requirements for foreign banks, on a branch-by-branch basis, that remain extremely high by international standards.¹³⁷
- Chinese authorities released, in November 2002, the draft of the *Regulation on Interbank Borrowing* that would limit inter-bank financing to 40% of RMB liabilities of a bank. The adoption of such a ratio would hurt the business development in RMB of foreign banks and would raise concerns as to its compatibility with China's WTO commitments.¹³⁸

¹³⁵ *Id.* at para. 10.

¹³⁶ *Transitional Review Mechanism Pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China - Questions from the United States to China*, G/TBT/W/231 (20 October 2003) at para. 2.

¹³⁷ *See, e.g., Communication from the United States, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China*, S/FIN/W/35 (26 November 2003) at para. 6.

¹³⁸ *See, e.g., Communication from Japan, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China*, S/FIN/W/30 (29 September 2003) at para. 8.

- Pursuant to the *Detailed Implementing Rules for the Regulations on the Administration of Foreign-Invested Financial Institutions*, foreign banks are limited to opening only one new branch per year, which constitutes a significant barrier to market access. China justified this on prudential grounds at the first TRM, but it appears that the same limitation is not applied to Chinese banks.¹³⁹

Auto Financing

China finally issued the long-awaited *Administrative Measures on Auto Financing Companies* on October 3, 2003 and the implementing rules on November 12, 2003. The regulations would make it possible for foreign non-bank institutions to engage in automobile financing in China, a sector that China committed to opening immediately upon accession. At the second TRM, Members raised concerns as to these regulations, the most important concern being China's high minimum capital requirement. In addition, some Members (e.g., the US) asked China whether it planned to expedite applications for motor vehicle financing licenses in light of China's delay in issuing the necessary regulations.¹⁴⁰

Insurance

In August 2003, the China Insurance Regulatory Commission released for public comment the draft amendments to the *Regulations on the Administration of Foreign-Invested Insurance Companies*. As noted by the United States in its submission, "these draft amendments significantly reduce capital requirements, an important and highly welcome step."¹⁴¹ However, some Members (e.g., the US and the EC) still remained concerned as to whether the reduction in

¹³⁹ See, e.g., *Communication from the European Communities, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China*, S/FIN/W/32 (12 November 2003) at para. 15.

¹⁴⁰ *Communication from the United States, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China*, S/FIN/W/35 (26 November 2003) at para. 7.

¹⁴¹ *Id.* at para. 2.

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capital requirements applied to reinsurance branches, whether China would consider reducing the registered capital requirement for low risk insurance models, and whether China would consider eliminating the redundant RMB 20 million capital requirement for branching.¹⁴²

At the second TRM, several Members also raised questions regarding licensing requirements. In particular, with respect to the elimination of geographic restrictions, they asked whether China permits licensed foreign-invested insurers to provide services nationally solely based on existing licenses without applying for a new license.¹⁴³

In addition, the United States again raised the issue of internal branching and asked China to explain why it will not permit internal branching by foreign non-life firms established in China as a branch, consistent with China's commitment to phase-out geographic restrictions.¹⁴⁴

Express Courier

In July 2003, China circulated draft amendments to its *Postal Services Law*. At the second TRM, some Members (e.g., the US and the EC) noted several concerns about the draft amendments, namely:

- The draft amendments give China Post a monopoly over the delivery of letters under 500 grams, which would constitute a new restriction on the scope of activities of existing foreign-invested express delivery companies.¹⁴⁵

¹⁴² *Communication from the United States, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/FIN/W/35 (26 November 2003) at para. 2; Communication from the European Communities, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/FIN/W/32 (12 November 2003) at para. 4.*

¹⁴³ *See, e.g., Communication from Japan, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/FIN/W/30 (29 September 2003) at para. 4.*

¹⁴⁴ *Communication from the United States, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/FIN/W/35 (26 November 2003) at para. 1.*

¹⁴⁵ *Communication from the United States, Transitional Review Mechanism in Connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/C/W/233 (26 November 2003) at para. 8.*

- The draft amendment does not address the need for an independent regulator.¹⁴⁶

Distribution Services

At the second TRM, some Members (e.g., the US and Japan) expressed concerns about China's uneven implementation of its commitment to phase in distribution services. They requested that China provide its schedule and the relevant legislation necessary to implement China's distribution services commitments. For instance, the US submission noted:

China appears to have implemented its commitments regarding wholesaling services and commission agents' services provided by foreign-invested enterprises with respect to goods that they manufacture in China. * * * However, China appears to have fallen behind in implementing its commitments regarding wholesale services and commission agents' services insofar as they relate to foreign-invested enterprises seeking to distribute goods made by other enterprises in China or imported goods. To date, China has only opened up wholesaling services and commission agents' services to joint ventures with minority foreign ownership that can satisfy a number of stringent qualification requirements and other restriction.

* * *

As in the wholesale area, China appears to have implemented its commitment to permit foreign invested enterprises to supply retailing services for their own goods manufactured in China. * * * However, China appears to have fallen behind in implementing its retailing services commitments insofar as they relate to joint ventures that do not manufacture their own goods in China. To date, although China has authorized retailing services to be supplied through joint ventures with minority foreign ownership, it greatly restricts the supply of these services.¹⁴⁷

¹⁴⁶ See, e.g., *id.*

¹⁴⁷ *Communication from the United States, Transitional Review Mechanism in connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, S/C/W/233* (26 November 2003) at paras. 3, 6.

C. U.S. and Private Sector Monitoring and Bilateral Approaches to Address Issues

1. Bilateral mechanisms for addressing issues

In addition to US efforts through the WTO to encourage China's WTO compliance, the US maintains an active bilateral relationship with China involving both formal high-level meetings as well as informal discussions. The United States and China maintain three formal vehicles for bilateral discussion: (1) the Joint Commission on Commerce and Trade, (2) the Joint Economic Commission, and (3) the Trade Dialogue. Charles Freeman, Deputy Assistant U.S. Trade Representative, has described the framework of US-China bilateral discussions on trade and economic matters as follows:

The Administration maintains three formal dialogues with Chinese ministries. The Commerce Department chairs meetings of the Joint Commission on Commerce and Trade; the Treasury conducts meetings of the Joint Economic Commission with the Chinese Ministry of Finance; and USTR chairs an interagency Trade Dialogue with counterparts from the Ministry of Commerce and relevant other Chinese agencies. Like many of the informal contacts, these formal occasions are opportunities not merely to discuss bilateral and multilateral trade and economic matters, but are themselves action-forcing events at which significant progress can be achieved. They also act as an early warning system on trade problems – providing an opportunity to resolve issues before they become broader bilateral irritants.

In addition to these formal processes, the Administration meets frequently on both the Cabinet and sub-cabinet level with senior Chinese officials, and uses such meetings to press the importance of economic issues with Chinese counterparts. In the case of USTR, Ambassador Zoellick meets or speaks via telephone with PRC Minister of Commerce Lu Fuyuan on a regular basis, has been to China twice since December 11, 2001, and plans to travel to China again for bilateral discussions next month. Ambassador Josette Sheeran Shiner recently confirmed as Deputy USTR, plans to continue an active dialogue with her counterparts, and other

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USTR officials meet regularly with Chinese officials on bilateral trade concerns, whether in Washington, Beijing, or at the WTO. These exchanges are critical opportunities to advance bilateral and multilateral trade and economic matters, and have proven effective in making progress on key U.S. concerns.¹⁴⁸

Joint Commission on Commerce and Trade

As noted above, the US-China trade dialogue that is chaired by the Department of Commerce is the Joint Commission on Commerce and Trade (JCCT). The Department of Commerce describes the purpose and activities of the JCCT as follows:

- The US-China Joint Commission on Commerce and Trade (JCCT) was established in 1983 as a forum for high-level dialogue on bilateral trade issues and a vehicle for promoting commercial relations.
- The JCCT works to resolve problems affecting US companies and serves as an umbrella for trade events and World Trade Organization (WTO) technical assistance programs.
- The JCCT is co-chaired by US Secretary of Commerce and China's Minister of Commerce and enjoys strong interagency support on both sides.
- The Commission consists of three working groups covering trade and investment issues, business development and industrial cooperation, and commercial law, as well as a side dialogue on export controls.
- Cabinet-level plenary sessions typically are held annually, while sub-cabinet sessions and subgroup meetings are more frequent and ongoing.
- The Department of Commerce (DOC) consults closely with US industry prior to each session to ensure that companies' most pressing concerns are addressed.¹⁴⁹

As noted above, the JCCT has three working groups covering trade and investment issues, business development and industrial cooperation, and commercial law. In addition, the

¹⁴⁸ *Is China Playing By the Rules? Free Trade, Fair Trade, and WTO Compliance*, Statement of Charles W. Freeman III, Deputy Assistant U.S. Trade Representative, before the Congressional-Executive Commission on China (September 24, 2003) (emphasis added).

¹⁴⁹ See U.S. Department of Commerce website: <http://www.mac.doc.gov/china/JCCTforwebo.htm>.

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US and China maintain a side dialogue on export controls. These groups are involved in the following bilateral activities:

- **The Trade and Investment Working Group (T&IWG):** The T&IWG is co-chaired by the DOC Assistant Secretary for Market Access and Compliance and China's Ministry of Commerce (MOFCOM) Director General for the Americas. The T&IWG covers issues related to market access, trade finance, and investment and business facilitation. T&IWG also provides an important venue where outstanding commercial dispute cases are reviewed and addressed.

The last T&IWG meeting convened at the directorial level in Washington, DC on August 11, 2003. The US side raised a number of issues including establishing further cooperation on standards development and stronger intellectual property rights protection. The US side also proposed strengthening and reinvigorating the T&IWG mechanism by designating a coordinator on each side, regularizing meetings, and maintaining a direct line of communication between working group meetings.¹⁵⁰

- **The Business Development and Industrial Cooperation Working Group (BDICWG):** The BDICWG is co-chaired by DOC Assistant Secretary for Trade Development and MOFCOM Director General of the Department of Science and Technology. The BDICWG promotes greater commercial cooperation on an industry sector basis. Industry sub-groups in environmental technologies, medical and pharmaceuticals, information industries, aviation and airport infrastructure, electric power technologies, and motor vehicle and allied products provide an ongoing policy forum for sector-focused discussion of market access and regulatory issues, and commercial cooperation. US Government agencies such as the EPA, FDA, and the FAA are important partners in supporting sub-group activities.

The BDICWG last convened in Washington in April 2003 to discuss industry sector-specific issues, review industry subgroup progress, and agree upon new priorities and principles for bilateral cooperation. The co-chairs agreed that all subgroups should undertake stronger cooperation on standards as a part of their overall efforts.¹⁵¹

- **Commercial Law Working Group (CLWG):** The CLWG is co-chaired by the Department of Commerce General Counsel and MOFCOM Director General for Treaty and Law. The CLWG works to improve commercial relations between the United States and China through discussion of legal issues of mutual interest. The CLWG has proven a useful forum for seeking reform of China's commercial law system in areas of concern to US companies. Through the CLWG there have been

¹⁵⁰ See U.S. Department of Commerce website: <http://www.mac.doc.gov/china/JCCTforwebo.htm>.

¹⁵¹ See U.S. Department of Commerce website: <http://www.mac.doc.gov/china/JCCTforwebo.htm>.

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successful discussions on measures to enhance the recognition and enforcement of arbitral awards in China and the inequitable application of China's border trade policy to goods that compete with US products.

The CLWG last convened in April 2002 in Beijing, where the US raised several concerns including lack of transparency in Chinese regulatory practices, problems with the method of promulgation and content of measures regulating foreign law firms issued by China's Ministry of Justice, and the process of granting marketing approval for generic drugs.

The CLWG also sponsors the US-China Legal Exchange, a series of joint legal seminars that foster mutual understanding of the legal regimes governing trade and investment in both countries. The seminars offer US audiences the opportunity to learn about the legal reforms taking place in China and provide Chinese participants the chance to learn about US practices. Under this program, the United States and China send delegations of legal experts to speak on topics of current interest. Both private sector and government attorneys have been featured at the seminars, which are open to government officials and academicians as well as the local business and legal communities. In December 2002, Vice Minister of Foreign Trade Long Yongtu led a delegation of Chinese legal experts to the United States to talk about the legal changes necessary for China to implement its WTO accession commitments. General Counsel Kassinger reciprocated, leading the most recent Legal Exchange delegation to China in November 2003 to discuss both recent developments in corporate governance practices in the United States as well as to discuss a variety of trade remedy measures used to safeguard fair trade between the United States and its trading partners, including China.¹⁵²

- **Export Controls Dialogue:** The Bureau of Industry and Security (BIS) meets with officials from MOFCOM's Department of Science and Technology under the Export Controls Side Dialogue of the JCCT. BIS has generally used the regularized exchange of the JCCT forum to encourage more cooperation from MOFCOM on end-use checks for US strategic goods licensed to China.

The Bureau of Industry and Security co-hosted the Sino-U.S. Export Control Outreach Seminar in Shanghai, China with China's Ministry of Commerce on September 17-18, 2003. The conference highlighted basic elements of US and Chinese export controls, regulations, and enforcement and was attended by 275 business and Chinese Government participants. Presenters at the conference consisted of both US and Chinese export control government representatives. Speakers from both governments were able to share their experience and knowledge of export controls with industry attendees.¹⁵³

¹⁵² See U.S. Department of Commerce website: <http://www.mac.doc.gov/china/JCCTforwebo.htm>.

¹⁵³ See U.S. Department of Commerce website: <http://www.mac.doc.gov/china/JCCTforwebo.htm>.

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Joint Economic Committee

The China-US Joint Economic Committee was established in 1979 and generally has met on an annual basis. The most recent meeting of the China-US Joint Economic Committee, the 15th Session, occurred in the United States in September 2002. The meeting discussed issues related to macroeconomic developments, financial sector issues (including transparency and financial service liberalization pursuant China's WTO commitments), cooperation on terrorist finance, anti-money laundering and other issues, and international financial institutions. US participants at the 15th JEC meeting included representatives from the Treasury, Federal Reserve, Office of the U.S. Trade Representative, Council of Economic Advisors, Securities Exchange Commission, Department of State, and Department of Commerce. Chinese participants included representatives from the Ministry of Finance, People's Bank of China, Ministry of Foreign Affairs, Ministry of Public Security, State Development Planning Commission, Ministry of Justice, China Securities Regulatory Commission, China Insurance Regulatory Commission and the Legislative Affairs Office of the State Council.¹⁵⁴

The Trade Dialogue

In October 2002, the United States and China established a new structure for bilateral trade discussions termed the US-China Trade Dialogue. As described by the USTR:

The U.S.-China Trade Dialogue is a new bilateral forum designed to bring U.S. and Chinese officials from throughout their governments to discuss bilateral trade issues, resolve potential disputes and foster cooperation on issues within the ongoing Doha global trade negotiations.¹⁵⁵

¹⁵⁴ See U.S. Department of Treasury, Joint Statement of the 15th Session of the China-U.S. Joint Economic Committee, September 9, 2002.

¹⁵⁵ USTR, press release 2003-10 (February 14, 2003).

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The United States and China decided to launch the Trade Dialogue in order to give senior trade officials a chance to meet and discuss trade issues on a regular basis. Press reports indicated that, under the new initiative, the US and China intended to convene on a quarterly basis.¹⁵⁶ To date, there have been two Trade Dialogues. The first occurred in February 2003 when USTR Zoellick traveled to Beijing and the second occurred in November 2003 in Beijing with the US delegation led by Deputy USTR Shiner.

Given China's shortfalls in meeting WTO commitments, bilateral relations, including the Trade Dialogue, have taken on increased importance as a vehicle for addressing China WTO compliance problems. The Deputy USTR Allgeier described the value of bilateral channels as follows:

When confronted with compliance problems, the Administration uses all available and appropriate means to obtain China's full WTO compliance, including intervention at the highest levels of government. The Administration has worked closely with the affected U.S. industries on compliance concerns, and has utilized bilateral channels through multiple agencies, at all levels, to press these concerns. * * *

In furtherance of these efforts, Ambassador Zoellick has met with his Chinese counterparts on numerous occasions. Most recently, in February of this year, he was in China and raised key WTO implementation and other concerns with Wen Jiabao, who is now China's Premier, and with the Trade Minister. This past February, USTR also launched a new trade dialogue with China, led on the U.S. side by then-Deputy U.S. Trade Representative Huntsman. Meanwhile, U.S. Embassy personnel in Beijing, including Ambassador Randt, continue to maintain close contacts with Chinese trade officials at all levels, and Deputy U.S. Trade

¹⁵⁶ U.S., *China Launch High-Level Trade Dialogue, Hope to Meet in January*, INSIDE US-CHINA TRADE, October 30, 2002.

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Representative Deily has developed a good working relationship with her Chinese counterpart at the WTO in Geneva.

These varied efforts are not merely designed to resolve current bilateral trade problems, but also to pre-empt future problems through an early-warning system. In general, the level of discourse has been quite high, and China's responsiveness has been satisfactory. As with any relationship as complex as that of the United States and China, however, resolving problems takes time and energy. At USTR, we are spending the maximum amount of time and energy on this task.¹⁵⁷

In its 2003 China compliance report, USTR highlights the following US-China bilateral efforts in 2003.

- As the slowdown in China's WTO implementation efforts became evident in 2003, the Administration stepped up its efforts to engage senior Chinese leaders. Over the course 2003, President Bush emphasized the importance of China's WTO obligations in meetings with his counterpart, Hu Jintao, and with China's Premier, Wen Jiabao.
- USTR Zoellick made two separate visits to China for talks on WTO implementation matters with Premier Wen and with Vice Premier Wu Yi.
- USTR Zoellick raised U.S. concerns throughout the year with his Ministry of Commerce (MOFCOM) counterpart, including most recently at the October 2003 APEC meetings in Thailand.
- The Secretaries of Commerce and Treasury made their own trips to China carrying the message that China's WTO implementation was a matter of the highest priority.
- Sub-cabinet officials from various U.S. economic and trade agencies also met with their Chinese counterparts in China, Washington and Geneva to work through areas of concern, including WTO implementation issues, on numerous other occasions.
- In 2003, the Administration established the "Trade Dialogue", a sub-cabinet dialogue on WTO compliance and other trade matters that brings together U.S. economic and trade agencies and various Chinese ministries and agencies with a role in China's WTO implementation. Trade Dialogue meetings were convened twice in 2003 (February and November). The Trade Dialogue meetings were used to communicate

¹⁵⁷ Statement by Ambassador Peter F. Allgeier, Deputy United States Trade Representative, Before the House Committee on Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies (May 22, 2003).

specific trade concerns and served as an early warning mechanism for emerging trade disputes.¹⁵⁸

2. Monitoring programs

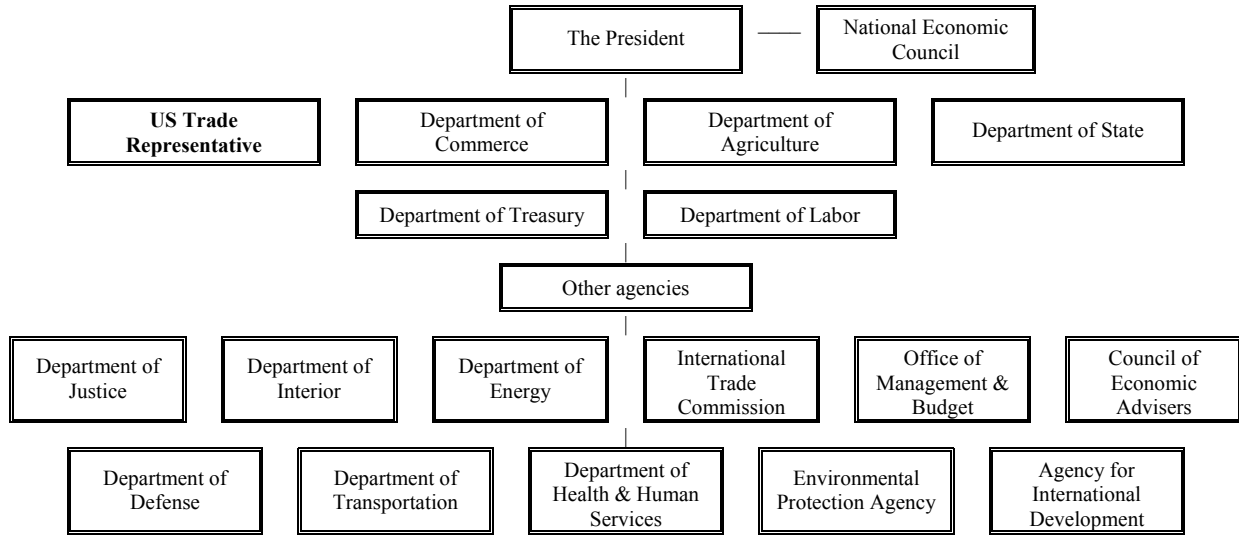
(a) Government

Monitoring of trade agreements generally

Since the 1980s, the United States has entered into more than 400 trade-related agreements. It is important to the success of these agreements in achieving their goals of liberalized trade and opening market access for U.S. companies that the agreements be effectively monitored and enforced. Meaningful monitoring and enforcement are also essential to maintaining public support and confidence in the benefits of trade agreements. Generally, within the federal structure, the Office of the US Trade Representative bears the primary responsibility for monitoring and enforcing trade agreements, but at least 16 other US Government agencies also are active, to varied degrees, in monitoring and enforcement activities, as the diagram below shows.

¹⁵⁸ USTR, *2003 Report To Congress On China's WTO Compliance*, at 5 (December 11, 2003).

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Source: US General Accounting Office, INTERNATIONAL TRADE: *Strategy Needed to Better Monitor and Enforce Trade Agreements* (GAO/NSIAD-00-76, March 2000) at 9 (figure 3).

After USTR, the US agencies with most involvement in monitoring trade agreements are the Departments of Commerce, Agriculture, and State, which conduct their own monitoring and enforcement efforts while also coordinating with USTR. The Departments of Commerce and Agriculture "have certain statutory monitoring responsibilities for trade agreements," and the Department of State "has an important role in monitoring and enforcing trade agreements because of its foreign policy expertise."¹⁵⁹ A brief summary of the functions of these primary monitoring agencies is presented below.

¹⁵⁹ US General Accounting Office, INTERNATIONAL TRADE: *Strategy Needed to Better Monitor and Enforce Trade Agreements* (GAO/NSIAD-00-76; March 2000) at 8.

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USTR:

- primarily responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy.
- leads or directs negotiations with other countries on such matters.
- primary agency responsible for monitoring and enforcing U.S. trade agreements.
- statutorily required to annually identify foreign policies and practices that constitute significant trade barriers and particularly considers whether any identified policies or practices are covered by trade agreements.
- refers to appropriate agency any unfair trade practice inconsistent with provisions of any trade agreement that has significant adverse impact on U.S. commerce.
- authorized to initiate actions to enforce U.S. rights under bilateral and multilateral trade agreements.
- chairs interagency group that oversees the multiple interagency committees that coordinate trade policy.

Commerce:

- general responsibility for major nonagricultural trade functions of the U.S. government, including monitoring and taking certain steps to secure compliance with trade agreements and ensuring that U.S. companies have access to foreign markets.
- statutorily responsible, along with USITC, for administering U.S. unfair trade laws (antidumping and subsidies).
- shares statutory responsibility with USTR for monitoring violations of WTO rules concerning member countries' subsidy practices.
- trade activities carried out primarily by International Trade Administration.

Agriculture:

- provides technical assistance to USTR on matters pertaining to agricultural trade, including international negotiations on agricultural trade agreements.
- statutorily responsible for implementing and monitoring the agricultural provisions of WTO agreements and NAFTA.
- required to report to USTR and Congress re non-compliance with WTO provisions that adversely affects U.S. agricultural trade.
- Foreign Agricultural Service handles Agriculture's trade activities and works with USTR and State on international agricultural trade issues.

State:

- advises USTR on the foreign policy implications of any trade-related actions and participates in trade negotiations that have direct and significant impact on foreign policy.
- State's Bureau of Economic and Business Affairs has overall responsibility for formulating and implementing policy regarding foreign economic matters.
- State's economic officers (through in-country contacts with U.S. businesses and foreign officials) provide instrumental assistance in monitoring and enforcing trade agreements.

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Other agencies:

- at least 13 other federal agencies are also involved in the monitoring and enforcement of trade agreements; they generally provide technical/policy input derived from their specialized areas of expertise. For example:
 - Treasury is responsible for developing policies on international monetary affairs, trade and investment, international debt strategy, and U.S. participation in international financial institutions, and advises USTR on the financial services aspects of trade agreements.
 - Labor advises USTR on any labor and workers' rights issues associated with trade agreements.
 - Health and Human Services' Food and Drug Administration helps Agriculture's FAS address other countries' health and food safety measures affecting U.S. exports.
 - U.S. International Trade Commission plays unique role due to broad investigative powers in monitoring trade data and trade agreements.

Inter-agency mechanisms:

- National Economic Council
 - cabinet-level organization established in 1993.
 - comprised of: the President; Vice President; Secretaries of State, Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy; Administrator of Environmental Protection Agency; Chair of Council of Economic Advisors; Director of Office of Management and Budget; U.S. Trade Representative; Assistants to President for Economic Policy, Domestic Policy, and Science and Technology Policy; National Security Advisor; and other executive departments/agencies as the President may designate.
 - coordinates domestic and international economic policy formulation.
 - reviews significant trade policy issues; ensures overall trade policy coordination.
- Trade Policy Committee (TPC)
 - chaired by USTR; includes State, Agriculture, Commerce, Treasury, and Labor.
 - two subordinate bodies - (1) Trade Policy Review Group (management-level) and (2) Trade Policy Staff Committee (senior staff-level).
 - subordinate committees comprised of TPC agencies, plus other agencies.
 - TPSC operates primarily through network of subcommittees/task forces composed of staff from various agencies and chaired by USTR staff.
 - TPSC subcommittees deal with both regional and industry-specific issues, and specialized task forces deal with specific trade issues.

Source: US General Accounting Office, INTERNATIONAL TRADE: *Strategy Needed to Better Monitor and Enforce Trade Agreements* (GAO/NSIAD-00-76; March 2000).

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In addition, a number the US agencies involved in trade issues, primarily USTR, Commerce, Treasury, State, and the International Trade Commission, are required by statute to prepare a variety of trade-related reports that assist their monitoring and enforcement efforts.¹⁶⁰

Monitoring of China's WTO commitments

In 2001, as China entered the WTO, the US government viewed the implementation of China's WTO commitments and obligations as critical to the success of China's incorporation into the global trade regime. Even more so than in the case of a typical trade agreement, the US focused on the need to vigilantly monitor and enforce China's WTO commitments. In the statute authorizing extension of normal trade relations treatment to China,¹⁶¹ Congress made the following findings:

The United States Government must continue to be vigilant in monitoring and enforcing the compliance by our trading partners with trade agreements in order for United States businesses, workers, and farmers to continue to benefit from the opportunities created by market-opening trade agreements.

The People's Republic of China, as part of its accession to the World Trade Organization, has committed to eliminating significant trade barriers in the agricultural, services, and manufacturing sectors that, if realized, would provide considerable opportunities for United States farmers, businesses, and workers.

For these opportunities to be fully realized, the United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO.¹⁶²

¹⁶⁰ For a listing of such reports, see US General Accounting Office, INTERNATIONAL TRADE: *Strategy Needed to Better Monitor and Enforce Trade Agreements* (GAO/NSIAD-00-76; March 2000) at p. 50-52 (Appendix III).

¹⁶¹ US-China Relations Act of 2000, Pub.L. 106-286, Div. B, Title IV, § 411, Oct. 10, 2000, 114 STAT. 880.

¹⁶² 22 U.S.C. § 6941 (emphasis added).

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Congress therefore authorized appropriations for additional resources to support monitoring of China's compliance with its WTO commitments. In particular, Congress authorized monitoring activities by the US Trade Representative and the Departments of Commerce and Agriculture. With respect to the Department of Commerce, Congress authorized appropriations for "monitoring compliance by the People's Republic of China with its commitments under the WTO."¹⁶³ For USTR, Congress authorized appropriations for additional staffing in "offices relating to the WTO and to different sectors of the economy, including agriculture, industry, services, and intellectual property rights protection, to monitor and enforce the trade agreement obligations of the People's Republic of China in those sectors."¹⁶⁴ With respect to the Department of Agriculture, Congress authorized appropriations "for additional staff to increase legal and technical expertise in areas covered by trade agreements and United States trade law, including food safety and biotechnology, for purposes of monitoring compliance by the People's Republic of China with its trade agreement obligations."¹⁶⁵ Congress also authorized appropriations to the Departments of Commerce and State for an overseas compliance program of "monitoring in the People's Republic of China that country's compliance with its international trade obligations."¹⁶⁶

In addition, Congress also created two commissions whose purpose is, in part, to monitor the progress of China's compliance with its WTO obligations.

¹⁶³ 19 U.S.C. § 6943(a)(1).

¹⁶⁴ 19 U.S.C. § 6943(c)(4).

¹⁶⁵ 19 U.S.C. § 6943(d).

¹⁶⁶ 19 U.S.C. § 6943(b)(1).

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<p>United States-China Economic and Security Review Commission (USCC) http://www.uscc.gov</p>	<ul style="list-style-type: none"> • created by Congress in the Floyd D. Spence National Defense Authorization Act for 2001 § 1238, Pub. L. No. 106-398, 114 STAT. 1654A-334 (2000) (codified at 22 U.S.C. § 7002 (2001)). • legislative mandate to monitor, investigate, and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China. • consists of 12 members, of which 3 members each are appointed by <ul style="list-style-type: none"> -- Speaker of the House of Representatives -- President pro tempore of the Senate (as recommended by the majority leader of the Senate) -- President pro tempore of the Senate (as recommended by the minority leader of the Senate) -- minority leader of the House of Representatives
<p>Congressional-Executive Commission on China (CECC) http://www.cecc.gov</p>	<ul style="list-style-type: none"> • created by Congress in the China Relations Act of 2000, Pub. Law No. 106-286 (October 10, 2000) (codified at 22 U.S.C. § 6911 et seq.). • legislative mandate to monitor China's compliance with international human rights standards, to encourage the development of the rule of law in the PRC, to establish and maintain a list of victims of human rights abuses in China, and to submit an annual report to the President and the Congress. • consists of: <ul style="list-style-type: none"> -- nine Senators appointed by the Senate Minority Leader in consultation with Senate Minority Leader -- nine members of the House of Representatives appointed by the Speaker of the House in consultation with the House Minority Leader -- five senior Administration officials appointed by the President

Given the great number of China's WTO commitments, as well as the complexity and breadth of the accession agreement, the task of monitoring and enforcing China's compliance with its WTO obligations is a challenging endeavor. In response to the increased responsibilities placed on them by China's accession to the WTO, the US Trade Representative, and the Departments of Commerce, Agriculture and State have focused efforts on improving their ability to monitor China's WTO compliance.

Soon after China's accession, the Department of Commerce described the steps it had taken to initiate its monitoring program.

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Commerce's China Team holds semiweekly strategy sessions to review cases and implementation plans. A new China-specific website (www.export.gov/china) provides US business with detailed information on China's WTO obligations, compliance and market opportunities. China Team representatives meet regularly with the commercial staff from the Chinese Embassy in Washington, D.C. and Commercial Service officers meet regularly with Ministry of Foreign Trade and Economic Cooperation in Beijing, to review specific market access and compliance problems. A group dedicated especially to monitoring developments relevant to potential unfair trade problems with China also has been established as an offshoot of Commerce's ongoing work in import monitoring and the enforcement of U.S. rights under the WTO with respect to multilateral subsidy disciplines. Among other things, this group will monitor China's provision of financial assistance and state aids to industrial enterprises to ensure that they conform to WTO commitments.

* * *

Commerce's enforcement efforts are part of a coordinated U.S. Government approach to monitoring and enforcing China's WTO compliance. In Washington, D.C., the U.S. Department of Commerce, the Office of the U.S. Trade Representative and the Departments of State, Treasury, Agriculture and Labor, play an active role in WTO implementation and monitoring efforts.

In Beijing, Commercial Service officers, along with State Economic officers, Foreign Agricultural Service officers and Customs Attaches, participate in a WTO Implementation Coordination Committee which meets regularly to assess progress and monitor problems, with input from US consulates in Shanghai, Guangzhou, Shenyang and Chengdu.¹⁶⁷

Also, in furtherance of its monitoring efforts, the Department of Commerce has set up a number of websites including *China Gateway* (<http://www.mac.doc.gov/china/WTOAccessionPackageNEW.html>) maintained by the Office of China Economic Area and *China Monitoring*

¹⁶⁷ US Department of Commerce, *China's Accession to the WTO: What it Means for U.S. Industry*, EXPORT AMERICA, Vol. 3, No. 1 (January 2002), at 25-26.

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(<http://ia.ita.doc.gov/trcs/imports/china/china.html>) maintained by the Import Administration's Trade Remedy Compliance Staff.

In a recent study, the US General Accounting Office examined how the key federal agencies had organized in order to address China compliance issues. The GAO reported that USTR, Commerce, Agriculture and State had "reorganized or established teams to better coordinate the activities among the various agency units involved in China WTO compliance," and had added staff in the United States and China to conduct their monitoring efforts.¹⁶⁸ In addition to intra-agency activities, "USTR established a staff-level interagency working group focused on China WTO compliance to identify, analyze, and resolve problems."¹⁶⁹ The GAO report summarized these monitoring efforts.

USTR
<ul style="list-style-type: none">• In June 2002, USTR created an Office of North Asian Affairs by merging the Offices of China and Japan; this office has primary responsibility for coordinating efforts on China WTO trade issues.• USTR's General Counsel and other sector/function-specific offices support the North Asian Affairs Office on China trade issues.• USTR's Monitoring and Enforcement Unit of the General Counsel's Office has primary responsibility for representing the US if a China-related dispute settlement case is brought before the WTO.
COMMERCE
<ul style="list-style-type: none">• In May 2001, Commerce created an intra-agency China Compliance Team to facilitate compliance monitoring efforts.

¹⁶⁸ US General Accounting Office, *WORLD TRADE ORGANIZATION: First-Year U.S. Efforts to Monitor China's Compliance*, GAO-03-461 (March 2003) at 5. The GAO report states that "full-time equivalent staff in key units that are involved in China monitoring and enforcement activities across the four agencies increased from about 28 to 53 from fiscal year 2000 to 2002, based on agency officials' estimates." *Id.* at 8. "Commerce had the largest overall increase in staff devoted to China WTO compliance. Specifically, staffing levels in Commerce's Market Access and Compliance division increased from 7 to 22 between fiscal years 2000 and 2002." *Id.* at 10.

¹⁶⁹ US General Accounting Office, *WORLD TRADE ORGANIZATION: First-Year U.S. Efforts to Monitor China's Compliance*, GAO-03-461 (March 2003) at 5. *See also US Sets Up Interagency Group to Deal With China WTO Compliance*, *INSIDE US-CHINA TRADE*, December 5, 2001, at 1; *US Interagency Group Begins to Scrutinize China's WTO Compliance*, *INSIDE US-CHINA TRADE*, December 12, 2001, at 1.

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- The China Compliance Team is comprised of 6 units and meets twice weekly:
 - Market Access and Compliance (MAC) (chair)
 - Import Administration
 - Trade Development
 - U.S. and Foreign Commercial Service (FCS)
 - Trade Information Center
 - Office of General Counsel
- 2 offices within MAC directly coordinate compliance efforts: Office of China Economic Area and Trade Compliance Center.

USDA

- In December 2001, USDA recognized its need to gather cross-agency expertise to aid in effectively monitoring China's WTO compliance regarding agriculture.
- USDA created 2 intra-agency task forces (a USDA-wide task force and a working-level task force) within USDA's Foreign Agricultural Service (FAS).
- 6 USDA agencies participate in the USDA-wide China Task Force, which was created in February 2002 and meets quarterly.
- The FAS-wide China Task Force (established March 2002) meets monthly to develop strategies for resolving China compliance issues.
- 2 divisions within FAS coordinate compliance efforts: the Asia and the Americas Division and the Multilateral Trade Negotiations Division.

STATE

- State officers at U.S. Beijing embassy took the lead in coordinating compliance monitoring efforts in China.
- U.S. embassy established a WTO Implementation Coordination Committee.
 - Committee meets monthly, is chaired by the embassy's economic minister, and coordinates WTO monitoring, compliance, technical assistance, and outreach efforts.
 - Committee is comprised of State officers from relevant sections, and officers from Commerce, USDA, and Customs.
 - Committee gathers, summarizes, and communicates information from China to U.S. government agencies in Washington, D.C.
- State's Office of Chinese and Mongolian Affairs is main communications link between US agencies in Washington, DC and U.S. embassy and consulates general in China.
 - The office coordinates instructions and other diplomatic dispatches regarding China WTO compliance issues.
 - It also coordinates with State's Bureau of Economic and Business Affairs to obtain sector-specific and other technical expertise on China trade issues.

**INTER-AGENCY MONITORING GROUP:
TPSC Subcommittee on China WTO Compliance**

- The Trade Policy Committee (TPC) is the formal interagency structure led by USTR.
- The TPC has 2 subordinate bodies: Trade Policy Review Group (management-level committee) and Trade Policy Staff Committee (senior staff-level committee subordinate to TPRC).
- In 2001, USTR established a new TPSC subcommittee to focus exclusively on China's compliance with its WTO commitments.
- The new subcommittee -- TPSC Subcommittee on China WTO Compliance -- is chaired by

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USTR and replaced an existing China subcommittee.

- Almost 40 officials, representing 14 departments and executive offices, participate in the China compliance subcommittee.
- In December 2001, the China WTO Compliance Subcommittee adopted an action plan with 8 components:
 - comprehensive monitoring activities on a coordinated interagency basis, with input from private sector groups;
 - regular dialogue with other WTO members;
 - outreach to the private sector about the business environment it should expect in China;
 - outreach to Chinese officials about their WTO commitments and compliance and its benefits;
 - technical assistance and capacity building activities for China;
 - active participation in the WTO Transitional Review Mechanism process;
 - facilitation of congressional oversight, by providing an annual report to Congress; and
 - efforts to seek enforcement of U.S. rights through bilateral and multilateral means, including recourse to WTO dispute settlement procedures, as appropriate.
- During its first year (2002) the China WTO Compliance Subcommittee was very active and met 11 times, at which officials evaluated and prioritized monitoring activities undertaken, reviewed steps taken by China to implement its commitments, and decided on appropriate responses. However, GAO states that, according to agency officials, much of their monitoring work takes place informally outside of formal meetings.
- The TPSC Subcommittee on China WTO Compliance held public hearings in both 2002 and 2003.
- GAO notes that it took some time for the TPSC subcommittee to "get up to full speed." This was due to several factors, such as the time needed by the various participants to work out roles and responsibilities, delineate monitoring tasks and set initial priorities. Also, it was sometimes difficult to obtain timely and accurate translations of Chinese laws and regulations for review.

Source: US General Accounting Office, WORLD TRADE ORGANIZATION: *First-Year U.S. Efforts to Monitor China's Compliance*, GAO-03-461 (March 2003) AT 6-8, 11-13.

In the US-China Relations Act of 2000, Congress enacted a requirement that USTR submit an annual report to Congress on China's compliance with its "commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States."¹⁷⁰ In its preparation of the compliance report, USTR is required to seek public participation through a public hearing.¹⁷¹ To date, USTR has issued its 1st (Dec. 2002) and 2nd (Dec. 2003) annual reports to Congress on

¹⁷⁰ 19 U.S.C. § 6951(a).

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China's WTO Compliance.¹⁷² In both 2002 and 2003, USTR conducted public hearings prior to submitting its annual report to Congress.¹⁷³

The US General Accounting Office has conducted a number of studies related to the monitoring of China's WTO commitments and trade agreements generally. These studies include the following:

- WORLD TRADE ORGANIZATION: *Ensuring China's Compliance Requires a Sustained and Multifaceted Approach* (GAO-04-172T) (October 30, 2003).
- WORLD TRADE ORGANIZATION: *First-Year U.S. Efforts to Monitor China's Compliance* (GAO-03-461) (March 2003).
- WORLD TRADE ORGANIZATION: *Analysis of China's Commitments to Other Members* (GAO-03-4) (October 2002).
- WORLD TRADE ORGANIZATION: *Selected U.S. Company Views about China's Membership* (GAO-02-1056) (September 2002).
- WORLD TRADE ORGANIZATION: *Observations on China's Rule of Law Reforms* (GAO-02-812T) (June 6, 2002).
- WORLD TRADE ORGANIZATION: *Status of China's Trade Commitments to the United States and Other Members* (GAO/NSIAD-00-142) (May 2000).
- INTERNATIONAL TRADE: *Strategy Needed to Better Monitor and Enforce Trade Agreements* (GAO/NSIAD-00-76) (March 2000).

The GAO has also established an electronic database of China's WTO commitments. Because an understanding of China's WTO accession obligations is essential to assessing whether China is abiding by its commitment, and because of the length and complexity of

¹⁷¹ 19 U.S.C. § 6951(b).

¹⁷² USTR, *2002 Report To Congress On China's WTO Compliance* (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance* (December 11, 2003). The China compliance reports are available at http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2002-12-11-China_WTO_compliance_report.pdf and <http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf>.

¹⁷³ A listing of the individuals and groups that submitted comments to, and testified before, the TPSC regarding China's WTO commitments is appended to USTR's China compliance reports. See USTR, *2002 Report To Congress On China's WTO Compliance* at Appendices 1 and 2; USTR, *2003 Report To Congress On China's WTO Compliance* at Appendices 1 and 2.

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China's accession agreement, the GAO created the electronic database to aid its analysis and to assist Congress, the Administration, and other interested parties in "analyzing, monitoring, and enforcing China's WTO commitments."¹⁷⁴ The GAO's electronic data base is available at <http://www.gao.gov/special.pubs/gaochnawtodb.zip>.

Recently, in the 2004 appropriations legislation for Commerce and related agencies, Congress criticized federal agency efforts to date in monitoring and enforcing China's WTO commitments. In particular, the Conference report adopted language in a House report that found that the International Trade Administration and US Trade Representative had failed to meet their mission to support U.S. businesses. The conference report stated:

The conferees understand the difficulties in attempting to balance the positive and the negative effects of a free trade agenda. The conferees are steadfast in their support of America's trade policy to create growth and raise living standards around the globe, and in return to increase the benefits to U.S. workers, farmers, consumers, and businesses. Yet, the U.S. Government must uphold its responsibility to enforce trade laws, particularly with China. If trading partners do not abide by the rules that are set in the global trading system, then U.S. firms are not competing on a level playing field.¹⁷⁵

Consequently, Congress appropriated additional funds for USTR and Commerce for monitoring, enforcement, and other China-related activities. In particular, Congress provided \$3 million for Commerce to establish an Office of China Compliance¹⁷⁶ and directed USTR to "increase the number of positions dedicated to enforcing the commitments made by the PRC

¹⁷⁴ See US General Accounting Office, *GAO's Electronic Database of China's World Trade Organization Commitments* (GAO-03-797R; June 13, 2003), available at <http://www.gao.gov/new.items/d03797r.pdf>.

¹⁷⁵ H. Conf. Rep. 108-401, *Making Appropriations For Agriculture, Rural Development, Food And Drug Administration, And Related Agencies For The Fiscal Year Ending September 30, 2004, And For Other Purposes Conference Report To Accompany H.R. 2673*, 108th Cong., 1st Sess. 574 (Nov. 25, 2003).

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Government upon accession to the WTO."¹⁷⁷ Congress also directed USTR "to provide a report detailing steps taken by the PRC Government toward meeting its WTO obligations."¹⁷⁸

Congress also directed USTR to prepare a report about steps taken to coordinate federal agency monitoring and enforcement efforts respecting trade agreements generally:

The conferees understand that a number of Federal agencies are involved in monitoring and enforcing our trade agreements. The conferees agree that robust monitoring and enforcement efforts are critical and that such efforts must be well coordinated within the Executive Branch. Accordingly, the conferees direct the USTR, working with the Department of Commerce and other Federal agencies, to take steps to assure that monitoring and enforcement efforts are coordinated among the Federal agencies to maximize their effectiveness and are based on a strategy that focuses on priority areas of potential trade violations. USTR is directed to report back to the Committees on Appropriations on these steps within 120 days of the enactment of this Act.¹⁷⁹

(b) Private sector

In addition to monitoring by US Government agencies, the private sector also has a strong interest in monitoring China's implementation of its WTO obligations. To the extent there are problems with China's WTO compliance, US companies are likely to experience the problems first hand through lack of access to business opportunities that were anticipated as a result of China's WTO accession. As such, they are often the best source for detecting

¹⁷⁶ Pub. L. 108-199, Div. B, Title II, Jan. 23, 2004, 118 STAT. 65.

¹⁷⁷ H. Rep. 108-221, *Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 2004*, 108th Cong., 1st Sess. 64. (2003).

¹⁷⁸ H. Rep. 108-221, *Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 2004*, 108th Cong., 1st Sess. 64. (2003).

¹⁷⁹ H. Conf. Rep. 108-401, *Making Appropriations For Agriculture, Rural Development, Food And Drug Administration, And Related Agencies For The Fiscal Year Ending September 30, 2004, And For Other Purposes Conference Report To Accompany H.R. 2673*, 108th Cong., 1st Sess. 573 (Nov. 25, 2003).

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compliance issues and are an important resource for the US Government agencies involved in monitoring China. The GAO noted that:

U.S. officials involved in China compliance monitoring obtain information from an informal, ad hoc network of business associations and individual companies to get information about Chinese trade practices and policies, to be alerted to market access problems and potential WTO violations, and to help weigh policy options.¹⁸⁰

A number of private organizations actively monitor China's compliance with WTO commitments and prepare periodic assessments of China's progress available on the internet. Examples of such groups include the following:

Organization	Information on China WTO Monitoring
US-China Business Council http://www.uschina.org	USCBC Analysis of China's WTO Compliance <ul style="list-style-type: none"> • <i>China's WTO Implementation Efforts: Year Two</i> (10/03/03) • <i>Testimony to the TPSC 2003</i> • <i>USCBC Written Testimony to USTR</i> • <i>USCBC Membership Priorities WTO Survey Results</i> • <i>China's WTO Implementation: A Mid-Year Assessment</i>, June 2003 • <i>Testimony before the Subcommittee on E. Asian and Pacific Affairs, Senate Foreign Relations Committee</i>, March 19, 2003 • <i>China's WTO Implementation Efforts: The First Nine Months</i> • <i>Testimony before the TPSC Hearing on China WTO</i>, September 18, 2002 • <i>USCBC written testimony for USTR</i>, September 18, 2002 • <i>China's WTO Implementation Efforts July 2002</i> • <i>Toward WTO: Highlights of PRC Implementation Efforts to Date</i> September 2001 • <i>Toward WTO: Highlights of PRC Implementation Efforts to Date</i> June 2001 See http://www.uschina.org/public/wto/#wtocompliance
US Chamber of Commerce http://www.uschamber.com	<ul style="list-style-type: none"> • <i>China's WTO Record: A Two-Year Assessment</i> (09-18-03), http://www.uschamber.com/press/testimony/030918wto.htm • <i>First Steps: A U.S. Chamber Report on China's WTO Progress</i> (September 2002), http://www.uschamber.com/press/releases/2002/september/02-137.htm

¹⁸⁰ US General Accounting Office, WORLD TRADE ORGANIZATION: *First-Year U.S. Efforts to Monitor China's Compliance*, GAO-03-461 (March 2003) at 14..

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Organization	Information on China WTO Monitoring
National Association of Manufacturers (NAM) http://www.nam.org	WTO Compliance Program <ul style="list-style-type: none"> • <i>The China Challenge</i> - 2/10/2004 • <i>NAM 2003 China WTO Compliance Report</i> - 10/8/2003 • <i>NAM 2002 China Compliance Report</i> - 9/11/2002 • <i>USTR Report to Congress on China's WTO Compliance</i>, 12-11-2002 - 3/7/2003 • <i>China's WTO Commitments for 2003</i> - 3/10/2003 • <i>NAM China WTO Compliance Program</i> - 2/22/2002 • <i>China-WTO Trade Compliance Contacts</i> - 3/10/2003 • <i>Impact of China's WTO Membership on U.S. Business</i> - 1/8/2002 (Special Report) • <i>NAM One-Stop Web Source on China's WTO Commitments</i> - 2/22/2002 • <i>WTO Compliance Program/Documents</i> - 2/20/2003 <i>See</i> http://www.nam.org/secondary.asp?TrackID=&CategoryID=1243
American Chamber of Commerce in China http://www.amcham-china.org.cn	<ul style="list-style-type: none"> • <i>WTO Implementation Report (Fall 2002)</i>, http://www.amcham-china.org.cn/publications/position/wto/wto_1.htm • <i>2003 White Paper - American Business in China</i>, http://www.amcham-china.org.cn/publications/white/2003/en-1.htm
Coalition of Services Industries http://www.uscsi.org	China Working Group <ul style="list-style-type: none"> • 02/05/2004: Statement o USCC on China's Compliance with WTO Commitments in Trade in Services (02-050-04) • CSI testimony to Trade Policy Staff Committee on China's compliance with its WTO accession commitments in services trade (10/3/2003) • CSI letter underlining China's issues of compliance with its WTO commitments in services (9/5/2003) <i>See</i> http://www.uscsi.org/groups/china.htm
US Council of International Business (USCIB); http://www.uscib.org/index.asp	<ul style="list-style-type: none"> • <i>Re China</i>: http://www.uscib.org/index.asp?documentID=2758 • <i>Written Comments re China's WTO Compliance</i> (09-10-03); http://www.uscib.org/%5Cindex.asp?documentID=2742.
International Intellectual Property Alliance (IIPA) http://www.iipa.com	<ul style="list-style-type: none"> • <i>IIPA testimony before USCC on China's failure to comply with its WTO commitments on copyright protection and enforcement and market access</i> (February 6, 2004) • <i>IIPA Comments Concerning China's Compliance with WTO Commitments</i> (September 10, 2003) <i>See</i> http://www.iipa.com/countryreports.html

In addition, many private sector companies, trade industry groups, labor unions and policy coalitions monitor China's WTO compliance with respect to their particular fields of interest. These groups support US monitoring efforts by informing the USTR and other agencies about Chinese business practices and any problems US companies are experiencing with market access. They also are active in submitting comments to the TPSC Subcommittee regarding China's WTO compliance. These groups include the following:

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• Advanced Medical Technology Association	• Grocery Manufacturers of America
• AFL/CIO	• International Anti-Counterfeiting Coalition, Inc.
• AgBiotech Planning Committee	• International Intellectual Property Alliance
• American Bar Association	• National Cattlemen's Beef Association
• American Forest and Paper Association	• National Cotton Council
• American Insurance Association/American Council of Life Insurers	• National Electrical Manufacturers Association
• American Iron and Steel Institute	• National Food Processors Association
• American Soybean Association	• National Food Processors Association
• American Sugar Alliance	• Pharmaceutical Research and Manufacturers Association
• Association of American Publishers, Inc.	• Recording Industry Association of America
• Automotive Trade Policy Council	• Semiconductor Industry Association
• Blue Diamond Growers	• U.S. Grains Council
• Central Soya Company	• U.S. Wheat Associates/Wheat Export Trade Education Committee
• Coalition for a Sound Dollar	• U.S. Motorcycle Manufacturers Association
• Conference of Asia Pacific Express Carriers	• UPS
• Distilled Spirits Council of the United States, Inc.	• U.S. Information Technology Office
• Federal Express	• U.S. Wheat Producers
• The Fertilizer Institute	• Wal-Mart
• Global Alliance for Trade Efficiency	• Wine Institute

Source: USTR, *2002 Report To Congress On China's WTO Compliance* (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance* (December 11, 2003).

3. Issues of importance identified in first two years¹⁸¹

In the course of monitoring the first two years of China's WTO membership, U.S. government and private sector groups have identified a number of areas that raised questions and concerns about the degree of China's compliance with WTO obligations and protocol

¹⁸¹ **NOTE:** In two previous subsections, this paper reviewed major concerns and questions that were raised by Members in the first and second annual TRM meetings. That review focused on the issues identified by Members generally within the overall multilateral TRM process at the WTO. The following section reviews some of the major China compliance issues identified by the United States, particularly in the US Trade Representative's 2002 and 2003 annual China compliance reports. Some of the issues identified and reviewed here overlap with the earlier sections dealing with issues raised within the TRM process, but in the following section these issues are presented from the perspective of the US and in greater detail.

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commitments. To date, the US Trade Representative has issued reports regarding China's implementation of its WTO commitments during 2002 and 2003. The 2003 China WTO compliance report found that China's implementation efforts failed to meet its commitments in important areas, and that, in some cases, China has imposed new or additional trade barriers.

USTR identified compliance problems in many areas, including the following:

- agriculture (TRQs on bulk agricultural commodities -- problems with sub-quotas, import licensing, allocation);
- 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 and 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);
- 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).¹⁸²

The following describes some of the more prominent and important issues of concern that have been raised with respect to China's WTO compliance.

¹⁸² See generally USTR, *2003 Report To Congress On China's WTO Compliance* (December 11, 2003).

(a) Trading rights

One of the most important commitments made by China in acceding to the WTO was in the area of trading rights. The area of trading rights covers both the right to import products into, and export products from, China. Access to and liberalization of trading rights is fundamental to a company's ability to conduct the full range of business in China.

Before accession, China restricted trading rights both as to the number and type of enterprises that could operate in China. USTR has described the period before accession as follows:

In the trading rights area, until shortly before its WTO accession, China severely restricted the number and types of enterprises that could import or export, and it also restricted the products that a particular enterprise could import or export. For the most part, China confined trading rights to certain state-owned trading and manufacturing enterprises, which could import or export goods falling within their approved scopes of business. China also granted limited trading rights to foreign-invested enterprises, which could import inputs for their production purposes and export their finished products.¹⁸³

China's WTO Commitments

In its accession agreement, with respect to trading rights (*i.e.*, the right to import and export goods), China committed to a progressive extension of trading rights for foreign-invested enterprises (FIEs), foreign companies, and foreign individuals. Upon accession, for both Chinese enterprises and FIEs, China committed to eliminating "any export performance, trade

¹⁸³ USTR, *2003 Report To Congress On China's WTO Compliance*, at 11 (December 11, 2003).

balancing, foreign exchange balancing and prior experience requirements, such as in importing and exporting, as criteria for obtaining or maintaining the right to import and export."¹⁸⁴

For Chinese-invested enterprises, China agreed to a progressive lessening of the minimum registered capital requirement to obtain trading rights from RMB 5,000,000 for year one (Dec. 2001-Dec. 2002) to RMB 3,000,000 for year two (Dec. 2002-Dec. 2003), and to RMB 1,000,000 for year three (Dec. 2003-Dec. 2004). By the end of the 3-year phase-in period, China also agreed to eliminate the examination and approval system for trading rights.¹⁸⁵

For FIEs, China agreed to gradually liberalize the scope and availability of trading rights according to the following schedule: (1) joint-venture enterprises with minority share foreign-investment would receive full trading rights one year after accession (Dec. 11, 2002); (2) joint-venture enterprises with majority share foreign-investment would receive full trading rights two years after accession (Dec. 11, 2003); and by the end of the third year after accession (Dec. 11, 2004), all enterprises would receive full trading rights.¹⁸⁶

By the end of the third year after accession (Dec. 11, 2004), China agreed to eliminate its system of examination and approval of trading rights.¹⁸⁷ At that time, with the exception of products reserved for state trading enterprises, Chinese enterprises, FIEs, and individuals (including sole proprietorships of other WTO Members) would be permitted to export and import all goods.¹⁸⁸ The import goods reserved to state-trading enterprises include: grain,

¹⁸⁴ *Report of the Working Party on the Accession of China*, para. 83(a).

¹⁸⁵ *Report of the Working Party on the Accession of China*, para. 83(b).

¹⁸⁶ *Report of the Working Party on the Accession of China*, para. 83(c), (d).

¹⁸⁷ *Report of the Working Party on the Accession of China*, para. 83(a).

¹⁸⁸ *Report of the Working Party on the Accession of China*, para. 83(a).

vegetable oil, sugar, tobacco, crude oil, processed oil, chemical fertilizer, and cotton.¹⁸⁹ The export goods reserved to state-trading enterprises include: tea, rice, corn, soybean, tungsten ore, ammonium paratungstates, tungstate products, coal, crude oil, processed oil, silk, unbleached silk, cotton, cotton yarn, woven fabrics of cotton, antimony ores, antimony oxide, antimony products, and silver.¹⁹⁰ With respect to certain products subject to designated trading, China agreed to liberalize trading rights within three years of accession (by Dec. 11, 2004). These products include: natural rubber, timber, plywood, wool, acrylic, and steel.¹⁹¹

China agreed generally to grant trading rights to foreign enterprises and individuals in a non-discriminatory and non-discretionary manner and that any requirements imposed for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade.¹⁹² China also agreed that requirements relating to minimum capital and prior experience would not apply to foreign enterprises and individuals.¹⁹³

The following box shows the specific commitments regarding trading rights undertaken by China in the Protocol and Working Party Report.

Protocol on Accession, WT/L/432 (23 November 2001)

5. Right to Trade

1. Without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement, China shall progressively liberalize the availability and scope of the right to trade, so that, within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A which continue to be subject to state trading in accordance with this Protocol. Such right to trade shall be the right to import and export goods. All such goods shall be accorded national treatment under Article III of the GATT 1994, especially paragraph 4 thereof, in respect of their internal

¹⁸⁹ *Report of the Working Party on the Accession of China*, Annex 2A1.

¹⁹⁰ *Report of the Working Party on the Accession of China*, Annex 2A2.

¹⁹¹ *Report of the Working Party on the Accession of China*, Annex 2B.

¹⁹² *Report of the Working Party on the Accession of China*, para. 84(b).

¹⁹³ *Report of the Working Party on the Accession of China*, para. 84(b).

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sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. For those goods listed in Annex 2B, China shall phase out limitation on the grant of trading rights pursuant to the schedule in that Annex. China shall complete all necessary legislative procedures to implement these provisions during the transition period.

2. Except as otherwise provided for in this Protocol, all foreign individuals and enterprises, including those not invested or registered in China, shall be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade.

Working Party Report, WT/MIN(01)/3 (10 November 2001)

IV. POLICIES AFFECTING TRADE IN GOODS

A. TRADING RIGHTS

1. General

80. ***

83. The representative of China confirmed that during the three years of transition, China would progressively liberalize the scope and availability of trading rights.

- (a) The representative of China confirmed that, upon accession, China would eliminate for both Chinese and foreign-invested enterprises any export performance, trade balancing, foreign exchange balancing and prior experience requirements, such as in importing and exporting, as criteria for obtaining or maintaining the right to import and export.
- (b) With respect to wholly Chinese-invested enterprises, the representative of China stated that although foreign-invested enterprises obtained limited trading rights based on their approved scope of business, wholly Chinese-invested enterprises were now required to apply for such rights and the relevant authorities applied a threshold in approving such applications. In order to accelerate this approval process and increase the availability of trading rights, the representative of China confirmed that China would reduce the minimum registered capital requirement (which applied only to wholly Chinese-invested enterprises) to obtain trading rights to RMB 5,000,000 for year one, RMB 3,000,000 for year two, RMB 1,000,000 for year three and would eliminate the examination and approval system at the end of the phase-in period for trading rights.
- (c) The representative of China also confirmed that during the phase-in period, China would progressively liberalize the scope and availability of trading rights for foreign-invested enterprises. Such enterprises would be granted new or additional trading rights based on the following schedule. Beginning one year after accession, joint-venture enterprises with minority share foreign-investment would be granted full rights to trade and beginning two years after accession majority share foreign-invested joint-ventures would be granted full rights to trade.
- (d) The representative of China also confirmed that within three years after accession, all enterprises in China would be granted the right to trade. Foreign-invested enterprises would not be required to establish in a particular form or as a separate entity to engage in importing and exporting nor would new business licence encompassing distribution be required to engage in importing and exporting.

The Working Party took note of these commitments.

84. (a) The representative of China reconfirmed that China would eliminate its system of examination and

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approval of trading rights within three years after accession. At that time, China would permit all enterprises in China and foreign enterprises and individuals, including sole proprietorships of other WTO Members, to export and import all goods (except for the share of products listed in Annex 2A to the Draft Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Such right, however, did not permit importers to distribute goods within China. Providing distribution services would be done in accordance with China's Schedule of Specific Commitments under the GATS.

- (b) With respect to the grant of trading rights to foreign enterprises and individuals, including sole proprietorships of other WTO members, the representative of China confirmed that such rights would be granted in a non-discriminatory and non-discretionary way. He further confirmed that any requirements for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade. The representative of China emphasized that foreign enterprises and individuals with trading rights had to comply with all WTO-consistent requirements related to importing and exporting, such as those concerning import licensing, TBT and SPS, but confirmed that requirements relating to minimum capital and prior experience would not apply.

The Working Party took note of these commitments.

2. Designated Trading

85. The representative of China stated that China would adjust and expand its list of enterprises under its designated trading regime annually during the transition period, leading up to full implementation of the commitment contained in Annex 2B. The current criteria for enterprises under the designated trading regime included registered capital, import and export volume and the import volume of products subject to designated trading in the previous year, bank credit rating and profits and losses.

86. Members of the Working Party noted China's commitment that it would phase out the limitation on the grant of trading rights for goods specified in Annex 2B of its Draft Protocol within three years after accession. In responding to questions raised by some members of the Working Party, the representative of China confirmed that China would progressively liberalize the right to trade in such goods by increasing the number of designated entities permitted to import goods in each of the three years of the transition period specified in Annex 2B. The representative of China added that China would eliminate import and export volume as a criterion for obtaining the right to trade these products, reduce minimum capitalization requirements and extend the right to register as designated importing and exporting enterprises to enterprises that used such goods in the production of finished goods and enterprises that distributed such goods in China. At the end of three years, all enterprises in China and all foreign enterprises and individuals would be permitted to import and export such goods throughout the customs territory of China. During the transition period, none of the criteria applicable under the designated trading regime would constitute a quantitative restriction on imports or exports. The Working Party took note of these commitments.

Compliance problems regarding trading rights

In the U.S. Trade Representative's China compliance report for 2002, USTR noted that, pursuant to its commitments, China was drafting regulations to extend trading rights to all domestic and foreign enterprises by the end of 2004, and that it was expected that such

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regulations would provide for automatic issuance of trading licenses based on routine applications and without imposing threshold requirements such as equity ownership, registered capital, scope of business, prior experience or other threshold requirements. USTR noted that it would monitor developments regarding trading rights.¹⁹⁴

In its 2003 monitoring report, USTR noted that, with respect to Chinese enterprises, China appeared to have implemented its trading rights commitments:

With the issuance of the Circular Concerning the Rules on the Administration of Import and Export Rights in July 2001, and the issuance of the Notice on the Rectification of Import and Export Qualification Standards and Verification Procedures in August 2003, China has kept pace with the required reductions in the minimum registered capital requirement for Chinese enterprises to obtain trading rights. Currently, the minimum registered capital for Chinese manufacturing enterprises is RMB 0.5 million (\$60,300), and the minimum registered capital for Chinese trading enterprises is RMB 1 million, except in the central and western regions, where the requirement was RMB 0.5 million.¹⁹⁵

Otherwise, however, with respect to foreign-invested enterprises (FIEs), USTR identified a number of shortfalls in China's compliance with its trading rights commitments. First, as to joint ventures with minority foreign ownership, China had not yet made full trading rights available (a commitment that was to have been fulfilled by December 11, 2002). Second, with respect to joint ventures with majority foreign ownership, China failed to meet the deadline for issuing provisions allowing for full trading rights to be available (a commitment that was to have been fulfilled by December 11, 2003).¹⁹⁶ Instead, USTR reported that eligibility for trading

¹⁹⁴ See USTR, *2002 Report To Congress On China's WTO Compliance*, at 19 (December 11, 2002).

¹⁹⁵ USTR, *2003 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2003).

¹⁹⁶ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2003).

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rights in China continued to be limited by pre-accession conditions such as requirements related to minimum registered capital, import levels, export levels and prior experience.¹⁹⁷ These types of conditions on trading rights were common before accession but were to have been eliminated as part of China's accession commitments.¹⁹⁸

China's current rules regarding FIEs were set out in its *Provisional Rules for the Establishment of Chinese-Foreign Equity Joint Venture Foreign Trade Companies*, issued in January 2003. Under these rules, the formation and operation of FIEs (with minority foreign ownership immediately and majority foreign ownership after December 11, 2003) are conditioned on certain requirements, including: (1) in the three preceding years, an average of at least \$30 million in annual trade with China (\$20 million if the FIE registers in central or western China), (2) a minimum registered capital of RMB 50 million (\$6.03 million), and (3) employees experienced in international trade.¹⁹⁹

Concerned with China's continuing restrictions on the trading rights of FIEs, the United States, throughout 2003, engaged China on this issue through bilateral talks and urged China to

¹⁹⁷ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2003).

¹⁹⁸ USTR notes:

Since well before China's accession, pursuant to China's *Foreign Trade Law*, foreign-invested manufacturing enterprises have had the right to import inputs for production purposes and the right to export their finished goods, without the need for prior approval. In January 2001, China expanded the import rights of some foreign-invested manufacturing enterprises with the issuance of the *Supplementary Provisions (II) to the Provisional Regulations Governing the Establishment of Investment-type Companies by Foreign Business Investment*. In July 2001, shortly before its accession, China granted limited additional export rights to some foreign-invested manufacturing enterprises with the issuance of the *Circular Concerning the Extension of Import and Export Rights for Foreign-Funded Enterprises*. Both of these measures, however, conditioned trading rights eligibility on requirements related to minimum registered capital, import levels, export levels and/or prior experience, among others.

USTR, *2003 Report To Congress On China's WTO Compliance*, at 12-13 (December 11, 2003).

¹⁹⁹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 13 (December 11, 2003).

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conform its trading rights regulations to its WTO commitments.²⁰⁰ The United States noted that, by December 11, 2004, China must implement final laws and regulations creating automatic trading rights for all enterprises, including Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals (including sole proprietorships).²⁰¹

In addition to USTR's China compliance report, the National Association of Manufacturers (NAM) issued a report in 2003 on China's WTO compliance. Similar to USTR, NAM's report identified compliance problems in the area of trading rights. NAM reported that China was "not fulfilling its commitment to allow foreign joint ventures to import and sell products (e.g., tires, automobiles, auto parts and industrial equipment) in China."²⁰² For example, NAM said that a "major tire company" had experienced restrictions on its trading rights that it had not anticipated.²⁰³ According to the tire company, the Chinese government allowed trading rights only to "new joint ventures" and required "Chinese and foreign partners to have separately done U.S. \$30 million in trade with China over each of the three preceding years."²⁰⁴

²⁰⁰ USTR, *2003 Report To Congress On China's WTO Compliance*, at 13 (December 11, 2003). The United States discussed the issue of trading rights with China at the first and second Trade Dialogues held in February 2003 and November 2003, respectively. In addition, the United States raised this issue at "a series of high-level meetings" in late 2003, as well as before the WTO's Market Access Committee in October 2003, in the context of the Transitional Review Mechanism at the WTO. *Id.*

²⁰¹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 13 (December 11, 2003).

²⁰² See National Association of Manufacturers, *Review Of China's Compliance With Its WTO Accession Commitments: Comments Submitted to the Interagency Trade Policy Staff Committee*, September 10, 2003 (available at www.nam.org).

²⁰³ *Id.*

²⁰⁴ *Id.* China's restrictive requirement of \$30 million in annual trade for three prior years was cited in USTR's 2003 report as well. See U.S. Trade Representative, *2003 Report To Congress On China's WTO Compliance*, at 13 (December 11, 2003).

Compliance positives regarding trading rights

Notwithstanding its identification of compliance problems regarding trading rights, USTR's 2003 report also highlights a positive development concerning trading rights. In November 2003, one year ahead of China's commitment, China authorized trading rights for certain U.S. automobile companies, which will permit these companies to import significant numbers of U.S.-manufactured automobiles into China and, as well, sell and service them through their own distribution networks.

(b) Automotive issues (financing, market access)

In the first two years of China's WTO membership, there were a number of compliance-related problems identified relating to commitments regarding automobiles and auto parts.

China's WTO Commitments

With respect to automotive issues, China assumed various obligations and commitments in its accession agreement, among them commitments on phasing out quotas on autos and auto parts and opening up motor vehicle financing services by non-bank financial institutions. In particular, with respect to auto quotas, China agreed to phase out quotas on motor vehicles and auto parts by January 1, 2005, with a 15% annual growth in the allowable quota until elimination.²⁰⁵ China also agreed to detailed rules on quota administration, including criteria for

²⁰⁵ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) Annex 3 (Non-Tariff Measures Subject to Phased Elimination); *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), Annex 3 (Non-Tariff Measures Subject to Phased Elimination).

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allocating quotas.²⁰⁶ In addition, China agreed "to make its quota system operational in time for applications to be accepted and quota allocations to take place by December 31, 2001."²⁰⁷

With respect to motor vehicle financing, China agreed that non-bank financial institutions would be allowed to perform auto financing services without any market access or national treatment restrictions.²⁰⁸ China assumed this commitment upon accession.

Compliance problems regarding auto quotas

Over the past two years, there have been chronic problems and delays concerning the administration and allocation of quotas on autos. The U.S. Trade Representative notes generally that "from the outset, China's quota system was beset with problems."²⁰⁹ The State Council did not issue the necessary regulations on time (not until mid-December 2001), and the authorities responsible for implementing the quota system (MOFTEC for some products; State Economic and Trade Commission (SETC) for other products) were late in allocating quotas. In addition, the regulations themselves appeared to be inconsistent in certain respects with WTO commitments.

In the case of quotas on autos, MOFTEC issued implementing rules shortly after the State Council issued its regulations in mid-December 2001 but the quota application process did not

²⁰⁶ See *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), Section IV.B.8. (Quantitative Import Restrictions, including Prohibitions and Quotas), paras. 121-131.

²⁰⁷ USTR, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

²⁰⁸ See *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), Annex 9 (Schedule of Specific Commitments on Services, WT/MIN(01)/3/Add.1, 10 November 2001) at 7.B. (Banking and Other Financial Services).

²⁰⁹ USTR, *2002 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2002); U.S. Trade Representative, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

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open until February 2002 and MOFTEC did not begin to allocate quotas until late April 2002.²¹⁰ Even then, however, additional problems arose due to lack of transparency. Parties could not determine clearly whether quotas had been allocated accurately. Moreover, as the U.S. Trade Representative noted, "it appeared that MOFTEC was creating false fill rates by filling the quota for autos with auto parts (other than the key auto parts allowed by China's accession agreement).²¹¹ Thus, by the end of 2002, the auto quotas had not been fully allocated.

The same types of problems with the auto quota system that were experienced in 2002 continued during 2003. Again, MOFTEC was late in issuing quota allocations, with resulting uncertainty and disruption in the wholesale and retail markets for imported autos.²¹² USTR commented: "Given the persistence of these problems, it appears that China's poor implementation of its auto quota commitments is not due simply to difficulties in implementing a new quota system."²¹³

Throughout 2002 and 2003, the United States voiced its concerns over China's administration of its auto quota system, including problems with the regulations, implementation, transparency, and allocations, in various bilateral meetings and at the Trade Dialogues held in February and November 2003. In addition, at the WTO, in cooperation with other WTO Members (EC; Japan), the United States raised these issues in the context of the regular meetings

²¹⁰ USTR, *2002 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2002); U.S. Trade Representative, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

²¹¹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

²¹² USTR, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

²¹³ USTR, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

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of the WTO Committee on Market Access and at the first and second TRM reviews held by the Market Access Committee in September 2002 and October 2003, respectively.²¹⁴

Partial resolution of problems regarding auto quotas

The substantive problems encountered in 2002 and 2003 with China's auto quota system (late allocations; transparency; etc.) have not been resolved. However, for certain U.S. auto companies, China resolved the problem of auto quotas when, in November 2003:

China announced that certain U.S. auto companies would be authorized to import sizeable quantities of U.S.-produced autos in 2004 without having to use Chinese enterprises holding quotas. This development effectively ends the auto quota system for these companies as of the end of 2003, one year ahead of schedule.²¹⁵

²¹⁴ USTR, *2002 Report To Congress On China's WTO Compliance*, at 12 (December 11, 2002); U.S. Trade Representative, *2003 Report To Congress On China's WTO Compliance*, at 23 (December 11, 2003).

²¹⁵ USTR, *2003 Report To Congress On China's WTO Compliance*, at 24 (December 11, 2003). Press reports indicated that the U.S. companies benefiting from China's decision included General Motors, Ford, and DaimlerChrysler. See USTR's *China Report More Skeptical, But Still Downplays WTO Action*, INSIDE US-CHINA TRADE, December 31, 2003.

USTR said China in November said it had given trading rights to "certain U.S. auto companies" one year ahead of schedule, which will let these select companies export cars to China. DaimlerChrysler and General Motors were among these companies (*Inside US-China Trade*, Nov. 19)."

The November 19 report referenced above stated:

Zhang's visit was also used to announce separate contracts with General Motors, Ford and DaimlerChrysler worth several billion dollars. According to a Nov. 12 GM release, China will buy 4,500 complete vehicles in 2004 and 2005, a deal worth about \$1.3 billion. The company also said it would export another \$1.1 billion in components for the assembly of GM cars produced in China, and that several smaller agreements have been struck to export several thousand other GM cars to individual Chinese importers.

In a separate Nov. 12 release, DaimlerChrysler said it also has an agreement with China to export 4,500 cars, and a Chinese release indicated that an agreement has also been reached with Ford.

U.S. Agricultural, Industrial Exports Surge In Recent Weeks, INSIDE US-CHINA TRADE, November 19, 2003.

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Compliance problems regarding motor vehicle financing

Despite agreeing that, upon accession, it would open up motor vehicle financing services to non-bank financial institutions, China failed to satisfy this commitment in 2002 and 2003. Because China had not opened this sector as promised, commercial banks were the only financial entities providing motor vehicle loan services. The U.S. Trade Representative's 2003 compliance report noted that one reason for China's failure to comply was China's long delay in issuing proposed regulations:

It was not until near the end of its second year of WTO membership that China finally issued all of the measures necessary to allow foreign financial institutions to offer auto loans. In June 2002 and again in September 2002, the Chinese regulator, the China Banking Regulatory Commission (CBRC), released draft regulations for comment.²¹⁶

Even once the regulations were drafted, however, the United States had concerns about whether the regulations were consistent with China's WTO obligations. In particular, the United States identified "excessive capitalization requirements, excessive net asset requirements and an unnecessarily long approval process" as WTO-inconsistent provisions.²¹⁷ The United States, in cooperation with the U.S. industry, submitted comments to the CBRC regarding both the June 2002 and September 2002 draft regulations. In addition, the United States pressed China for compliance with its commitments in bilateral meetings during 2002 and 2003 and in meetings of the Council for Trade in Services at the WTO (including in the context of the first TRM in October 2002).²¹⁸

²¹⁶ USTR, *2003 Report To Congress On China's WTO Compliance*, at 58-59 (December 11, 2003).

²¹⁷ USTR, *2003 Report To Congress On China's WTO Compliance*, at 59 (December 11, 2003).

²¹⁸ USTR, *2003 Report To Congress On China's WTO Compliance*, at 59 (December 11, 2003).

In October 2003, the CBRC finally issued final regulations. The U.S. Trade Representative noted, however, that "[a]lthough the final regulations reduced the capital requirements from the levels set in the earlier drafts, they still remain relatively high, as the minimum registered capital is RMB 300 million (\$36.2 million), and the minimum paid-in capital is RMB 500 million (\$60.3 million)."²¹⁹ But, notwithstanding that China had finally issued regulations, the motor vehicle financing sector was still not open to foreign financial institutions until China issued implementing rules establishing the procedures for applying for licenses to provide financing services. The CBRC issued implementing rules one month later, in November 2003. The United States has urged China to act expeditiously on license applications.

(c) Financial services

Banking services

China's WTO Commitments

In its accession agreement, China committed to liberalize banking services over a 5 year phase-in period. Banking services covered include acceptance of deposits and other repayable funds from the public, lending of all types, financial leasing, payment and money transmission services, guarantees and commitments, and trading of foreign exchange for own account or that of customers. China agreed that, upon accession, US and other foreign banks would be permitted to conduct foreign currency business with Chinese enterprises and individuals throughout China without restriction and, within certain specified geographic locations, would be permitted to conduct local currency business with FIEs and foreign individuals. The provision of

²¹⁹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 59 (December 11, 2003).

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local currency business services to Chinese enterprises and individuals was subject to a scheduled phase-in. Within 2 years after accession, US and other foreign banks would be permitted to conduct domestic currency business with Chinese enterprises, subject to certain geographic restrictions, and within 5 years after accession, US and other foreign banks would be permitted to conduct domestic currency business with Chinese individuals, and all geographic restrictions would be lifted.

China's banking services commitments as set out in its services schedule are summarized below.

China WTO Commitments -- Banking Services²²⁰

At accession 12-11-01	Within 1 year by 12-11-02	Within 2 years by 12-11-03	Within 3 years by 12-11-04	Within 4 years by 12-11-05	Within 5 years by 12-11-06
<p>Geographic coverage:</p> <ul style="list-style-type: none"> foreign currency business: no restriction local currency business: open to Shanghai, Shenzhen, Tianjin and Dalian <p>Local currency business qualifications:</p> <ul style="list-style-type: none"> 3 years business operation in China profitable for 2 consecutive years prior to application <p>Clients:</p> <ul style="list-style-type: none"> foreign currency business, no restriction foreign financial institutions licensed for local currency business in one region of China may service clients in any other region that has been opened for such business <p>Licensing:</p> <ul style="list-style-type: none"> criteria: solely prudential (no economic needs test or quantitative limits on licenses) condition to establish a subsidiary of foreign bank: total assets of more than US\$ 10 billion at end of year prior to application condition to establish a branch of foreign bank: total assets of more than US\$ 20 billion at end of year prior to application condition to establish a Chinese-foreign joint bank: total assets of more than US\$ 10 billion at end of year prior to application 	<p>Geographic coverage:</p> <ul style="list-style-type: none"> local currency business: open to Guangzhou, Zhuhai, Qingdao, Nanjing, and Wuhan 	<p>Geographic coverage:</p> <ul style="list-style-type: none"> local currency business: open to Jinan, Fuzhou, Chengdu, and Chongqing <p>Clients:</p> <ul style="list-style-type: none"> local currency business: may provide services to <u>Chinese enterprises</u> 	<p>Geographic coverage:</p> <ul style="list-style-type: none"> local currency business: open to Kinming, Beijing, and Xiamen 	<p>Geographic coverage:</p> <ul style="list-style-type: none"> local currency business: open to Shantou, Ningbo, Shenyang, and Xi'an 	<p>Geographic coverage:</p> <ul style="list-style-type: none"> local currency business: all geographic restrictions removed <p>Clients:</p> <ul style="list-style-type: none"> local currency business: may provide services to <u>all Chinese clients</u> <p>Licensing:</p> <ul style="list-style-type: none"> eliminate any existing non-prudential measures restricting ownership, operation, and juridical form of foreign financial institutions (including on internal branching and licenses)

²²⁰ *Source: Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001), Annex 9 (Schedule of Specific Commitments on Services, WT/MIN(01)/3/Add.1, 10 November 2001) at 7.B. (Banking and Other Financial Services).*

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China's record of compliance regarding banking services

By and large, over the past two years, China has kept pace with its commitments to liberalize banking services. Most recently, for instance, consistent with its commitments, the People's Bank of China (PBOC) announced in December 2003 that foreign banks will be permitted to conduct domestic currency business with Chinese enterprises. However, the US government has expressed concerns over China's cautious approach to approving banking licenses and branches and with China's imposition of prudential requirements on foreign banks that exceed international norms.

After accession, the People's Bank of China (PBOC) issued regulations and implementing rules covering foreign-funded financial institutions. These regulations became effective February 1, 2002. The U.S. Trade Representative has noted that although PBOC's regulations were timely, China lagged in opening banking services to foreign banks. In particular, USTR said that PBOC had imposed "working capital requirements and other prudential rules that far exceeded international norms" and that these measures made it more difficult for foreign banks to establish headquarters and branches in China.²²¹ At first, in 2002, the PBOC acted slowly on applications by foreign banks to conduct foreign or local currency business with FIEs and foreign individuals, but by October 2003, the PBOC had approved the applications of 13 US banks to establish branches or representative offices in China. USTR noted, however, that only large major banks could meet the application requirements.²²²

In its 2003 compliance report, USTR notes that the PBOC claims that the domestic currency business of US banks in China, although limited to business with FIEs and foreign

²²¹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 56 (December 11, 2003).

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individuals, has grown rapidly in the last two years. According to the PBOC, US banks' deposits and assets increased in 2002 by 75% and 14%, respectively, and in the first half of 2003, further increased by 20% (deposits) and by 10% (assets).

Despite the growth of US banks' presence in China, the US government has repeatedly urged China to conform its prudential requirements for foreign banks to international norms. Over the past two years, the US raised this issue with China in bilateral meetings in 2002 and 2003, at meetings of the WTO Committee on Trade in Financial Services, and in the context of the first and second TRM meetings of the Financial Services Committee in October 2002 and November 2003. USTR's 2003 report states that it has achieved a degree of progress with China on this issue as, in December 2003, the PBOC "reduced working capital requirements for various categories of foreign banks by at least RMB 100 million."²²³

Insurance services

China's WTO Commitments

In its accession agreement, China agreed to liberalize the insurance services sector by granting expanded ownership rights to foreign insurers and by phasing out geographic restrictions within three years of accession. China committed that it would issue licenses only on the basis of prudential criteria, and that it would not apply any economic needs test or quantitative limits. China also agreed that it would allow internal branching for foreign insurers consistent with the phased elimination of geographic restrictions. In summary, China agreed to the following phased-in expansion of ownership rights:

²²² USTR, *2003 Report To Congress On China's WTO Compliance*, at 56 (December 11, 2003).

²²³ USTR, *2003 Report To Congress On China's WTO Compliance*, at 56 (December 11, 2003).

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	Type of insurance services	Form of establishment permitted
Upon accession	foreign non-life insurers	branch or joint venture with 51% foreign ownership
	foreign life insurers	joint venture with partner of choice with 50% foreign ownership
	large scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance	joint venture with foreign equity of no more than 50%
Within 2 years of accession	foreign non-life insurers	wholly-owned subsidiary
Within 3 years of accession	large scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance	joint venture with foreign equity of no more than 51%
Within 5 years of accession	large scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance	wholly-owned subsidiary

China's insurance services commitments as set out in its services schedule are summarized below.

China WTO Commitments -- Insurance Services²²⁴

At accession 12-11-01	Within 1 year by 12-11-02	Within 2 years by 12-11-03	Within 3 years by 12-11-04	Within 4 years by 12-11-05	Within 5 years by 12-11-06
<p>Form of establishment:</p> <ul style="list-style-type: none"> foreign non-life insurer as branch or JV with 51% foreign ownership foreign life insurer as JV with partner of choice with 50% foreign ownership brokerages for insurance of large scale commercial risks, reinsurance, international marine, aviation & transport insurance and reinsurance as JV with foreign equity no more than 50% other brokerage services unbound internal branching permitted consistent with phase out of geographic restrictions <p>Geographic coverage:</p> <ul style="list-style-type: none"> Shanghai, Guangzhou, Dalian, Shenzhen and Foshan 		<p>Form of establishment:</p> <ul style="list-style-type: none"> foreign non-life insurer as wholly-owned subsidiary <p>Geographic coverage:</p> <ul style="list-style-type: none"> Beijing, Chengdu, Chongqing, Fuzhou, Suzhou, Xiamen, Ningbo, Shenyang, Wuhan & Tianjin 	<p>Form of establishment:</p> <ul style="list-style-type: none"> brokerages for insurance of large scale commercial risks, reinsurance, international marine, aviation & transport insurance and reinsurance as JV with foreign equity no more than 51% <p>Geographic coverage:</p> <ul style="list-style-type: none"> no restrictions 		<p>Form of establishment:</p> <ul style="list-style-type: none"> brokerages for insurance of large scale commercial risks, reinsurance, international marine, aviation & transport insurance and reinsurance as wholly foreign-owned subsidiary

²²⁴ Source: Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001), Annex 9 (Schedule of Specific Commitments on Services, WT/MIN(01)/3/Add.1, 10 November 2001) at 7.A. (All Insurance and Insurance-Related Services).

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At accession 12-11-01	Within 1 year by 12-11-02	Within 2 years by 12-11-03	Within 3 years by 12-11-04	Within 4 years by 12-11-05	Within 5 years by 12-11-06
<p>Business scope:</p> <ul style="list-style-type: none"> foreign non-life insurers may provide "master policy" & large scale commercial risk insurance w/o geographic restriction foreign insurance brokers may provide "master policy" no later than Chinese brokers foreign non-life insurers may provide insurance of enterprises abroad as well as property, related liability, and credit insurance of FIEs in China foreign insurers may provide individual (not group) insurance to foreigners and Chinese citizens foreign insurers may provide reinsurance services for life and non-life insurance as a branch, JV, or wholly foreign-owned subsidiary, w/o quantitative or geographic restrictions on number of licenses issued <p>Licenses:</p> <ul style="list-style-type: none"> no economic needs test or quantitative limits qualifications for foreign insurance institution are: foreign insurance company with more than 30 years experience in WTO member; representative office in China for 2 consecutive years; total assets of more than US\$ 5 billion at end of year prior to application (except for brokers); brokers shall have total assets of more than US\$ 500 million <p>National treatment:</p> <ul style="list-style-type: none"> foreign insurance institutions may not engage in statutory insurance business require 20% cession of all lines of primary risks for non-life, personal accident and health insurance business with appointed Chinese Reinsurance Company 	<p>Licenses:</p> <ul style="list-style-type: none"> foreign insurance brokers shall have total assets of more than US\$ 400 million <p>National treatment:</p> <ul style="list-style-type: none"> require 15% cession of all lines of primary risks for non-life, personal accident and health insurance business with appointed Chinese Reinsurance Company 	<p>Business scope:</p> <ul style="list-style-type: none"> foreign non-life insurers may provide full range of non-life insurance services to foreign & domestic clients <p>Licenses:</p> <ul style="list-style-type: none"> foreign insurance brokers shall have total assets of more than US\$ 300 million <p>National treatment:</p> <ul style="list-style-type: none"> require 10% cession of all lines of primary risks for non-life, personal accident and health insurance business with appointed Chinese Reinsurance Company 	<p>Business scope:</p> <ul style="list-style-type: none"> foreign insurers may provide health insurance, group insurance & pension/annuities insurance to foreigners and Chinese citizens <p>Licenses:</p> <ul style="list-style-type: none"> foreign insurance brokers shall have total assets of more than US\$ 200 million <p>National treatment:</p> <ul style="list-style-type: none"> require 5% cession of all lines of primary risks for non-life, personal accident and health insurance business with appointed Chinese Reinsurance Company 	<p>Licenses:</p> <ul style="list-style-type: none"> foreign insurance brokers shall have total assets of more than US\$ 200 million <p>National treatment:</p> <ul style="list-style-type: none"> no compulsory cession required 	

China's record of compliance regarding insurance services

Following accession, China's insurance regulator, the China Insurance Regulatory Commission (CIRC), issued new insurance regulations covering foreign insurance companies which implemented many of China's commitments. However, the new regulations also raised

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new problems with respect to three important areas: capitalization requirements, transparency and branching.²²⁵

In its 2003 compliance report, USTR states that CIRC's capitalization requirements are "significantly more exacting" than in other countries and that they "limit the ability of foreign insurers to make necessary joint venture arrangements."²²⁶ The new regulations also are not transparent in that they allow substantial bureaucratic discretion in licensing actions and do not provide predictability to foreign insurers. With respect to the issue of branching, even though China made specific commitments concerning branching,²²⁷ the new regulations are vague regarding branching rights of foreign insurers. Moreover, CIRC has required that non-life insurers that already have branches in China and wish to establish a new branch or sub-branch in China must first establish as a subsidiary. In USTR's view, this requirement is both costly and unnecessary.²²⁸ USTR also noted that China has not applied this rule consistently in that CIRC apparently waived it, without explanation, for at least one foreign insurer.²²⁹

In 2002, the United States held a number of bilateral discussions with CIRC, MOFTEC and the State Council at which it raised its concerns about the issues of capitalization requirements, transparency, and branching.²³⁰ In cooperation with Canada, the EC, Japan and

²²⁵ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

²²⁶ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

²²⁷ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003): "With regard to branching, China scheduled a commitment to allow non-life firms to establish as a branch in China upon accession and to permit internal branching in accordance with the lifting of China's geographic restrictions. China further agreed that foreign insurers already established in China that were seeking authorization to establish branches or sub-branches would not have to satisfy the requirements applicable to foreign insurers seeking a license to enter China's market."

²²⁸ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

²²⁹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

²³⁰ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

Switzerland, the US also raised these issues at the WTO before the Committee on Trade in Financial Services in the context of the first TRM in October 2002.²³¹ As a result of their bilateral discussions, the US and China agreed to set up a working group to discuss insurance issues, with an emphasis on capitalization requirements and other prudential standards. The US and CIRC working group first met in December 2002.

Throughout 2003, the US continued to press China on insurance issues through a number of high-level bilateral meetings, including the Trade Dialogues in February and November 2003. Progress began to be evident when, in August 2003, China issued new draft implementing rules regarding capitalization requirements and transparency. These draft rules clarify licensing procedures and lower capital requirements for national licenses from RMB 500 million (\$60.3 million) to RMB 200 million (\$24.1 million) and for branch offices from RMB 50 million (\$6.03 million) to RMB 20 million (\$2.41 million).²³²

On a positive note concerning China's compliance, USTR reports that CIRC lifted, ahead of schedule, certain geographic restrictions on foreign life insurers.²³³

(d) Administration of TRQs in agriculture

China's WTO Commitments

Prior to WTO accession, China maintained a quota system on imports of bulk agricultural products. When China acceded to the WTO, China agreed to expand market access by reducing

²³¹ USTR, *2003 Report To Congress On China's WTO Compliance*, at 57 (December 11, 2003).

²³² USTR, *2003 Report To Congress On China's WTO Compliance*, at 58 (December 11, 2003).

²³³ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 58 (December 11, 2003): "In early 2002, CIRC approved life insurance operations for U.S. insurers in Beijing, Suzhou and Tianjin, two years before China had committed to do so in its services schedule. In 2003, CIRC approved life insurance

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tariffs on a wide range of agricultural products and committed to ending quotas and establishing tariff rate quotas (TRQs) on the following bulk commodities: wheat, corn, rice, soybean oil, palm oil, rapeseed oil, sugar, wool and cotton. With respect to the TRQs, China also committed to (1) administering the TRQs transparently and making predictable, uniform, fair and nondiscriminatory decisions based on specified time periods, administrative procedures and requirements, (2) reserving a portion of the TRQs for non-state trading enterprises, (3) progressively expanding the in-quota amount over a 3-4 year implementation period, (4) eliminating TRQs on soybean oil, palm oil, and rapeseed oil by January 1, 2006, and (5) designating a single central authority to allocate and re-allocate TRQs.

The following box shows China's general commitments regarding tariff rate quotas as set out in the Working Party Report.

Working Party Report, WT/MIN(01)/3 (10 November 2001)

7. Tariff Rate Quotas

112. * * *

115. The representative of China further noted that, in undertaking market-oriented reform in the agricultural sector, China had made progress in freeing agricultural products from state pricing and in guiding farmers to adjust the structure of agricultural production based on the demands of the market. In connection with that reform process, in the bilateral negotiations with Members, China committed that, upon accession, it would eliminate TRQs on a number of products and subject these only to tariffs. The products concerned were barley, soybeans, rapeseed, peanut oil, sunflower seed oil, corn oil, and cottonseed oil. In addition, China would replace quantitative import restrictions on sugar, cotton and three types of fertilizers (DAP, NPK and urea) by TRQs. The Working Party took note of these commitments.

116. The representative of China stated that upon accession, China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ. China would apply TRQs fully in accordance with WTO rules and principles and with the provisions set out in China's Schedule of Concessions and Commitments on Goods. The Working Party took note of these commitments.

operations for a U.S. insurer in Chongqing nearly one year ahead of schedule. Other foreign life insurers must now be provided the same access to those cities."

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117. The representative of China confirmed that for the goods listed in Annex 2 of the Draft Protocol that were subject to a TRQ, China would also apply the provisions of its Schedule relating to TRQ administration and related commitments in the Draft Protocol, including the grant of trading rights to non-state trading entities to import the TRQ allocations set aside for importation by such entities. For products in Annex 2 of the Draft Protocol that were subject to designated trading, the representative of China confirmed that China would ensure that additional enterprises granted trading rights in accordance with China's commitments to phase out designated trading would not be disadvantaged in the allocation of TRQ. The Working Party took note of these commitments.

118. * * *

119. The representative of China confirmed that the role of sub-national bodies would be limited to purely administrative operations, such as receiving applications from end-users and forwarding them to the central authority; receiving queries and transmitting these to the central authority; reporting on allocation and reallocation decisions made by the central authority and providing information regarding such allocations and reallocations upon request; checking the information in the applications to verify that it met the published criteria; notifying applicants of any deficiencies in their applications; and providing applicants with an opportunity to cure deficiencies in their applications. After the central authority decided on allocations of quota to end-users, the sub-national bodies would issue TRQ certificates accordingly. The representative of China also confirmed that China would administer a consistent national allocation (and reallocation) policy for TRQs, that it would not establish a separate process of allocation to sub-national authorities and that decisions regarding all allocations and reallocations to end-users would be made by a single, central authority. The Working Party took note of these commitments.

120. The representative of China further confirmed that China would grant to any enterprise possessing the right to trade any product pursuant to Section 5 of the Draft Protocol, the right to import goods in Annex 2A of the Draft Protocol that were subject to a TRQ or to an agreed volume of imports by non-state trading enterprises. Such right to import would not extend to the quantity of goods specifically reserved for importation by state trading enterprises. Any enterprise possessing the right to trade pursuant to Section 5 of the Draft Protocol would also have the right to import that portion of a TRQ reallocated to non-state trading enterprises pursuant to the agreed rules on TRQ administration. The representative of China also confirmed that for goods in Annex 2A of the Draft Protocol subject to a TRQ, any enterprise granted the right to trade, pursuant to Section 5 of the Draft Protocol, would be permitted to import such goods at the out-of-quota rate. The Working Party took note of these commitments.

China's record of compliance regarding agricultural TRQs

In the U.S. Trade Representative's China compliance reports for both 2002 and 2003, USTR states that ever since the State Development and Planning Commission (SDPC) (renamed the National Development and Reform Commission (NDRC) after mid-2003 government restructuring) began administering the TRQs after China's accession, a series of problems has

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undermined market access for US exporters. USTR's reports²³⁴ identify the following problems with China's administration of agricultural TRQs in 2002:

TRQ Problems in 2002	
Delay in issuing regulations	<ul style="list-style-type: none"> in 2002, SDPC was late in issuing both draft and final regulations
Flawed regulations	<ul style="list-style-type: none"> the regulations failed to provide the required transparency imposed burdensome licensing procedures established a separate sub-quota for the processing and re-export trade (contravening China's accession agreement)
Delay in acting on applications	<ul style="list-style-type: none"> SDPC was late beginning the application process
Delay in allocation of TRQs	<ul style="list-style-type: none"> allocation of TRQs did not even begin until late April 2002, approximately four months late
Discriminatory allocation of TRQs	<ul style="list-style-type: none"> available information indicated that SDPC decided to allocate TRQs in a manner to protect domestic farm interests and maintain the STEs' monopoly
Limited transparency	<ul style="list-style-type: none"> SDPC refused to provide specific details on the amounts and the recipients of the TRQ allocations
Violation of market access and national treatment commitments	<ul style="list-style-type: none"> SDPC reserved a significant portion of the TRQs for the processing and re-export trade this practice held down imports' market share in China's domestic market and created more competition for WTO members' processed goods in other export markets <i>re:</i> cotton, more than 60% of TRQs apparently reserved for Chinese companies that process cotton for re-export
Undermine market access commitments Administer TRQs in manner not predictable, uniform and fair	<ul style="list-style-type: none"> SDPC allocated a portion of the TRQs for some commodities in smaller than commercially viable quantities SDPC employed burdensome licensing requirements
Low TRQ fill rates	<ul style="list-style-type: none"> 2002 trade data showed extremely low fill-rates for TRQ commodities of most interest to US industry: 7% (wheat); 0.1% (corn), 22% (cotton)

²³⁴ See USTR, 2002 Report To Congress On China's WTO Compliance, at 32 (December 11, 2002); USTR, 2003 Report To Congress On China's WTO Compliance, at 45 (December 11, 2003).

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In an effort to address the series of problems identified regarding China's agricultural TRQs, the United States repeatedly engaged China bilaterally in 2002 and noted its concerns at meetings of the WTO Committee on Agriculture, including that committee's TRM meeting in September 2002. In July 2002, the United States formally requested consultations with China regarding its TRQs administration. In September 2002, the US and China met in Geneva, where the US presented its concerns and China confirmed its policy of reserving a portion of the TRQs for the export processing and re-export trade.²³⁵

USTR reported that, in 2003, some progress was made in China's TRQ administration, to the extent that SDPC completed required re-allocation of 2002 TRQs on time and issued 2003 TRQs "close to the prescribed time."²³⁶ However, the other problems with China's TRQ administration persisted through 2003. In particular, USTR cited imperfect regulations, lack of transparency, sub-division of the TRQ, small allocation sizes and burdensome licensing.²³⁷

Through 2003, the United States continued to meet bilaterally with China on TRQ issues. USTR reported that, as a result of high-level meetings in Beijing in June 2003, China agreed to address most US concerns. In October 2003, China issued new regulations (effective January 1, 2004) that (1) eliminate separate allocations for general trade and processing trade, (2) eliminate certain unnecessary licensing requirements, and (3) create a new mechanism for identifying allocation recipients.²³⁸

²³⁵ See USTR, *2002 Report To Congress On China's WTO Compliance*, at 32 (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance*, at 46 (December 11, 2003).

²³⁶ See USTR, *2002 Report To Congress On China's WTO Compliance*, at 32 (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance*, at 46 (December 11, 2003).

²³⁷ See USTR, *2002 Report To Congress On China's WTO Compliance*, at 32 (December 11, 2002); USTR, *2003 Report To Congress On China's WTO Compliance*, at 46 (December 11, 2003).

²³⁸ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 46 (December 11, 2003).

(e) Tariffs

In its accession agreement, China committed to reduce its tariff rates upon accession and on an annual basis thereafter according to the tariff bindings in China's Goods Schedule. According to this Schedule, the "final" bound rate for some products will be reached after a designated time period with annual reductions in the bound rate over that period. Thus, China agreed that it would apply an MFN tariff rate on imported products that is no higher than the bound rate for those products.

A comparison between China's WTO schedule of tariff commitments for 2003 and 2004 (*i.e.*, bound rates in China's Goods Schedule)²³⁹ with China's actual tariff reductions as reflected by the corresponding MFN rates published in China's Customs Tariff Schedules (Customs Import and Export Tariff of the People's Republic of China) for 2003 and 2004 shows that, for the most part, China timely implemented its tariff rate reduction commitments as required in its Goods Schedule. *See* Appendix 8.

However, as discussed below, there appear to have been a number of discrepancies in China's tariff reduction implementation.

- Information Technology Agreement

In 2002, a problem arose regarding tariff reductions for products covered by the Information Technology Agreement. China had agreed to eliminate, by January 1, 2005, tariffs on computers, semiconductors and other information technology products. However, with respect to 15 tariff lines, China conditioned tariff reductions on submission of a Ministry of

²³⁹ WT/ACC/CHN/49/Add.1 (Schedule CLII - People's Republic of China, Part I - Schedule of Concessions and Commitments on Goods).

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Information Industry (MII) end-use certificate guaranteeing that imported products would be used as inputs in producing finished IT products in China. This condition was not authorized by the Goods Schedule of China's accession agreement. The US objected to China's action and conducted bilateral meetings in 2002. At the WTO, during 2002, the US blocked China's membership in the ITA Committee until the issue was resolved.

This issue was apparently resolved in 2003. On January 1, 2003, China transferred the certification requirement from MII to the Customs Administration. This change established a more workable system, and the US removed its block on China's ITA Committee membership at the WTO, which China joined in April 2003.

- Specific Duties and Compound Duties

Duties on imports are generally based on the value of the goods (*ad valorem* duties). In most cases, China's bound rate is expressed as an *ad valorem* rate and China implemented its tariff commitments through *ad valorem* rates. Duties may, however, be based on some other factors such as weight or quantity (specific duties), or a combination of value and other factors (compound duties). For certain products, China has chosen to implement its tariff reduction commitment through specific and compound rates rather than *ad valorem* rates. Under WTO dispute settlement precedent, the maintenance of tariff schedules based on something other than the type of tariff binding (*e.g.*, specific tariffs instead of *ad valorem*) is not, per se, a WTO violation. However, it would be a violation of China's WTO tariff binding if, pursuant to specific or compound rates, China collected duties that in fact exceeded the tariff binding.²⁴⁰

²⁴⁰ See, *e.g.*, *Argentina-Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, Report of the Appellate Body, WT/DS56/AB/R, March 27, 1998.

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With respect to China's 2002 tariff reductions through specific rates, USTR noted that "[t]ariff treatment of certain products in 2002 – including the use of specific rather than *ad valorem* tariff rates for chicken parts . . . – did not appear to fully match China's WTO commitments."²⁴¹

As reviewed below, an examination of China's specific and compound duties for 2003 indicates that application of China's specific (but not compound) duties for certain products raises the possibility that duties collected for those products based on specific rates may exceed China's tariff binding.

Appendix 3 to China's Harmonized Tariff Schedules for 2003 contains a number of items subject to Specific and Compound Tariff Rates. The Items contained in Appendix 3 and the corresponding bound tariff rates in China's Goods Schedule are as follows:

Specific Duties

As the Table below indicates, a number of the items to which China applies specific tariffs appear to have *ad valorem* equivalents that would be in excess of the bound rate contained in China's Goods Schedule. More information would be needed, however, to determine whether these specific rates are possible violations of China's obligations. As noted above, the relevant test is whether or not the duty applied in China on imports from WTO Members is in fact higher than the bound rate.

As a test of likely compliance, Chinese import statistics published by GTIS China World Trade Atlas were analyzed for 2003. The following Table presents the average import price (CIF Basis) in China for specific-duty HS categories listed for the year 2003, as well as an estimate of

²⁴¹ USTR, *2003 National Trade Estimate Report on Foreign Trade Barriers*, at 48.

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the *ad valorem* equivalent based on the specific tariff rate listed in Appendix 3. These figures are then compared to the 2003 bound rate (*ad valorem*), with any difference noted in the far right column. A plus sign (+) indicates that the estimated *ad valorem* equivalent rate for the specific tariff, based on average 2003 prices, was higher than the bound rate. A minus sign (-) indicates that the specific tariff, based on average 2003 prices, was lower than the bound rate. As noted above, under WTO precedent, where tariffs imposed on imports exceed the bound rate tariff, there is a WTO violation. Hence, it would appear that many of China's 2003 specific tariff items present violations of China's WTO tariff reduction commitments.

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Tariff No.	Bound Rate as of 01-01- 2003	---- MFN Rate ----		Units	--- Chinese Import Values ---		Import Units	Ad Valorem Equivalent	Ad Valorem Compared to Bound Rate
		RMB / unit	US\$\$s / unit		2002 \$ / unit	2003 \$ / unit			
0207.12.00	20.0%	1.3	0.16	kg	-	0.95	KG	16.5%	-
0207.14.11	12.0%	0.8	0.10	kg	0.79	0.70	KG	13.8%	+
0207.14.19	12.0%	1.2	0.14	kg	1.56	1.60	KG	9.1%	-
0207.14.21	12.0%	1	0.12	kg	1.14	1.05	KG	11.5%	-
0207.14.29	12.0%	0.6	0.07	kg	0.67	0.68	KG	10.7%	-
0504.00.21	20.0%	1.4	0.17	kg	0.87	0.79	KG	21.4%	+
2203.00.00	42.0%	1.5	0.18	litre	1.20	1.16	L	15.6%	-
2709.00.00	0.0%	0	-	ton	0.18	0.22	KG	n.a.	+
3701.30.21	10.0%	4.5	0.54	sq m	3.34	4.25	M2	12.8%	+
3701.30.22	10.0%	3.9	0.47	sq m	4.21	7.08	M2	6.7%	-
3701.30.29	10.0%	6.8	0.82	sq m	10.57	19.08	M2	4.3%	-
3702.31.00	46.7%	92.9	11.22	sq m	2.17	2.50	N	n.a.	+
3702.32.20	10.0%	7	0.85	sq m	5.97	2.33	M2	36.3%	+
3702.32.90	22.0%	40	4.83	sq m	12.22	19.48	M2	24.8%	+
3702.39.20	10.0%	3.7	0.45	sq m	12.47	22.03	M2	2.0%	-
3702.39.90	22.0%	38	4.59	sq m	11.54	14.23	M2	32.3%	+
3702.41.00	17.8%	34.1	4.12	sq m	3.26	6.76	M2	60.9%	+
3702.42.21	10.0%	2.1	0.25	sq m	0.87	0.73	M2	34.8%	+
3702.42.29	10.0%	3.7	0.45	sq m	1.70	2.19	M2	20.4%	+
3702.42.91		58.5	7.07	sq m	-	1.63	M2	433.6%	+
3702.42.99		58.5	7.07	sq m	-	4.59	M2	154.0%	+
3702.43.21	10.0%	3.7	0.45	sq m	2.71	2.50	M2	17.9%	+
3702.43.29	10.0%	3.7	0.45	sq m	2.79	3.87	M2	11.6%	+
3702.43.90	20.0%	39	4.71	sq m	1.82	13.78	M2	34.2%	+
3702.44.21	10.0%	3.7	0.45	sq m	3.85	2.73	M2	16.4%	+
3702.44.22	10.0%	2.1	0.25	sq m	1.15	1.00	M2	25.4%	+
3702.44.29	10.0%	3.7	0.45	sq m	2.16	3.52	M2	12.7%	+
3702.44.90	20.0%	39.4	4.76	sq m	1.46	12.49	M2	38.1%	+
3702.51.00	51.3%	164.9	19.92	sq m	0.77	0.66	M	n.a.	-
3702.52.00	51.3%	122.7	14.82	sq m	0.32	-	-	n.a.	-
3702.53.00	51.3%	164.9	19.92	sq m	1.69	1.79	M	n.a.	-
3702.54.10	36.0%	155	18.73	sq m	0.75	0.65	M	n.a.	-
3702.54.90	36.0%	115.7	13.98	sq m	0.66	0.61	M	n.a.	-
3702.55.20	26.0%	13.8	1.67	sq m	0.21	0.20	M	n.a.	-
3702.55.90	46.7%	111.7	13.49	sq m	0.55	0.44	M	n.a.	-
3702.56.20	24.0%	13.8	1.67	sq m	-	1.29	M	n.a.	-
3702.69.00	50.0%	107.2	12.95	sq m	n.a.	n.a.		n.a.	-
3702.91.00	22.0%	65	7.85	sq m	0.15	0.23	M	n.a.	-
3702.93.10	20.0%	65	7.85	sq m	0.51	0.61	M	n.a.	-
3702.93.90	20.0%	64.3	7.77	sq m	0.53	0.36	M	n.a.	-
3702.94.20	22.0%	11.7	1.41	sq m	0.26	0.26	M	n.a.	-
3702.94.90	22.0%	60	7.25	sq m	0.46	0.37	M	n.a.	-
3702.95.20	22.0%	10.4	1.26	sq m	41.88	-	-	n.a.	-
3702.95.90	22.0%	50.5	6.10	sq m	1.72	1.25	M	n.a.	-

Compound Duties

Generally, China's Compound duties appear to be in compliance with China's WTO obligations. In a few instances, however, the *ad valorem* equivalent tariff is quite high, over 500%. This is likely due to the fact that the average unit value of imports for that item was significantly below the threshold price limit set in the compound tariff. Therefore, these items have been labeled "n.m." for "not meaningful."

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Tariff No.	MFN Rate	AVCT	RMB / unit	Units	2002 \$ / unit	2003 \$ / unit	Import Units	Ad Valorem Equivalent
8521.10.11	P<USD2000/set SCT=0 AVCT=33%	33.0%		No.	11,208.27	9,166.89	N	33.0%
	P>USD2000/set SCT=Yuan 4980/set AVCT=3%		3.0%	4,980				9.6%
8521.10.19	P<USD2000/set SCT=0 AVCT=33%	33.0%		No.	112.77	43.48	N	33.0%
	P>USD2000/set SCT=Yuan 4980/set AVCT=3%		3.0%	4,980		n.m.		
8521.10.20	P<USD2000/set SCT=0 AVCT=33%	33.0%		No.	12,563.40	8,992.41	N	33.0%
	P>USD2000/set SCT=Yuan 4980/set AVCT=3%		3.0%	4,980				9.7%
8525.30.91	P<USD5000/set SCT=0 AVCT=35%	35.0%		No.	32,180.17	47,739.87	N	35.0%
	P>USD5000/set SCT=Yuan 13280/set AVCT=3%		3.0%	13,280				6.4%
8525.30.99	P<USD5000/set SCT=0 AVCT=35%	35.0%		No.	33.78	13.61	N	35.0%
	P>USD5000/set SCT=Yuan 13280/set AVCT=3%		3.0%	13,280		n.m.		
8525.40.41	P<USD5000/set SCT=0 AVCT=15%	22.5%		No.	7,779.43	7,952.50	N	22.5%
	P>USD5000/set SCT=Yuan 4980/set AVCT=3%		3.0%	4,980				10.6%
8525.40.49	P<USD5000/set SCT=0 AVCT=15%	15.0%		No.	43.49	12.84	N	15.0%
	P>USD5000/set SCT=Yuan 4980/set AVCT=3%		3.0%	4,980		n.m.		
8525.40.50	P<USD5000/set SCT=0 AVCT=20%	20.0%		No.	141.27	105.96	N	20.0%
8525.40.50	P>USD5000/set SCT=Yuan 7055/set AVCT=3%		3.0%	7,055		n.m.		

(f) VAT

In the Working Party Report, some WTO Members " expressed concern that some internal taxes applied to imports, including a value-added tax ("VAT") were not administered in conformity with the requirements of the GATT 1994, particularly Article III,"²⁴² which obliges Members to provide national treatment. Those Members "noted that China appeared to permit the application of discriminatory internal taxes and charges to imported goods and services, including taxes and charges applied by sub-national authorities."²⁴³ In response to these concerns, China:

confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its

²⁴² Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001) at para. 104.

²⁴³ Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001) at para. 104.

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WTO obligations and that it would implement such laws, regulations and other measures in full conformity with those obligations.²⁴⁴

In its 2003 report, USTR noted that China uses VAT policies "to encourage domestic production in a number of industrial and agricultural sectors," particularly, semiconductors and fertilizer.²⁴⁵ USTR stated that in the case of semiconductors, China provided VAT rebates to domestic semiconductor producers and, in the case of fertilizer, China exempted domestically-produced fertilizer from the VAT. USTR noted that these were examples of differential tax treatment that "raised serious WTO concerns."²⁴⁶ U.S. private sector groups have expressed their views on VAT more forcefully. For example, the U.S. Council on International Business commented regarding semiconductors:

The Chinese government imposes a 17 percent VAT on all domestically produced and imported semiconductors sold in China, but permits domestic semiconductor producers to obtain a rebate of the VAT paid in excess of 3 to 6 percent, depending on the circumstances. As a result, imported semiconductors are subject to a much higher effective VAT rate than are domestic semiconductors benefiting from the rebate. This discriminatory tax treatment is a clear violation of the national treatment obligation of Article III of the GATT 1994, and runs counter to explicit Chinese commitments in the Protocol of Accession and the Working Party Report on China's WTO Accession to bring its VAT into compliance with WTO rules.²⁴⁷

²⁴⁴ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 107.

²⁴⁵ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 7-8 (December 11, 2003).

²⁴⁶ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 7-8 (December 11, 2003).

²⁴⁷ U.S. Council for International Business (USCIB), *Written Comments re China WTO Obligations*, September 10, 2003; available at <http://www.uscib.org/%5Cindex.asp?documentID=2742>.

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USTR stated in December 2003 that it would "continue to press China" on the VAT issue and would "take further appropriate actions seeking elimination of China's differential tax treatment, including dispute resolution at the WTO, if necessary."²⁴⁸ Subsequently, in February 2004, USTR indicated that it was actively preparing a WTO dispute settlement case against China's VAT policy as applied to semiconductors, but that it would give China "one last shot" to resolve the matter.²⁴⁹ Testifying before the Senate Finance Committee on March 9, 2004, USTR Zoellick stated that the United States was moving closer to challenging China over China's value-added tax on semiconductors:

If they don't fix it very soon we're going to bring a case," Zoellick said of China's semiconductor VAT.²⁵⁰

Subsequently, press reports indicated that the United States would file a WTO dispute settlement case. On March 17th, the Financial Times reported:

The US is set to launch its first World Trade Organisation complaint against China, charging that Beijing is violating global trade rules by offering big tax breaks for domestic semiconductor producers.

The case, which US officials said could be filed as early as Wednesday [*i.e.*, March 17], will mark the end of a two-year honeymoon in which Washington has tried to resolve a series of disputes with China without resorting to the WTO.

* * *

At issue is a 17 per cent value-added tax that China imposes on all semiconductors. The Chinese government rebates all but 3 to 6 per cent of that tax for domestic producers but retains the full tax on

²⁴⁸ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 8 (December 11, 2003).

²⁴⁹ *USTR Warns of China WTO Case on Semiconductor VAT if No Progress by April*, INSIDE US-CHINA TRADE, February 11, 2004.

²⁵⁰ *Zoellick Signals Clear Opposition to WTO Case on China Currency*, INSIDE US-CHINA TRADE, March 10, 2004.

imports, giving domestic chipmakers a huge advantage in an industry with narrow profit margins.

The Chinese tax has become the biggest international trade issue for the \$70bn (£39bn, E57bn) US semiconductor industry, which fears the rebate is encouraging semiconductor production in China at the expense of US imports.

The US industry had wanted a negotiated solution to the dispute, which would have prevented a long WTO dispute settlement process. But China has refused to relent, arguing it is a critical part of its development strategy.²⁵¹

On March 18, 2004, the United States formally filed a WTO dispute settlement case against China "regarding its discriminatory tax rebate policy for integrated circuits."²⁵²

(g) SPS

In the Working Party Report, some Members "expressed concerns in relation to the use by China of sanitary and phytosanitary ("SPS") procedures as non-tariff barriers."²⁵³ In response, China said that "pursuant to the provisions of the SPS Agreement, China applied SPS measures only to the extent necessary to protect the life and health of human beings, animals and plants" and committed that "China would not apply SPS measures in a manner which would act as a disguised restriction on trade" and "would ensure that SPS measures would not be

²⁵¹ Edward Alden, *US to file WTO complaint against China*, FINANCIAL TIMES, March 17, 2004; available at <http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=1079419679859>.

²⁵² USTR press release 2004-22: *U.S. Files WTO Case Against China Over Discriminatory Taxes That Hurt U.S. Exports* (March 18, 2004).

²⁵³ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 198.

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maintained without sufficient scientific evidence."²⁵⁴ China also confirmed that it comply with the SPS Agreement upon accession.²⁵⁵

In 2002 and 2003, however, US agricultural products were subjected to various SPS measures that were, in the US' view, questionable, raised WTO concerns, and frustrated US export efforts. For example, in 2002 and 2003, China imposed a zero-tolerance policy on pathogens in imports of raw poultry and meat, a standard that the US states is "not reasonably achievable, nor scientifically justifiable."²⁵⁶ Moreover, China's standard for imports is contrary to national treatment principles as it does not apparently apply domestic raw poultry and meat.²⁵⁷ US wheat exports also experienced SPS problems due to China's imposition of, first, a maximum residue level (MRL) for selenium that is lower than the international standard, and second, an MRL for vomitoxin in wheat even though there is no international standard.²⁵⁸ The US repeatedly engaged China on these issues in 2002 and 2003, both bilaterally and in the WTO TRM in the context of the WTO Committee on Sanitary and Phytosanitary Measures, but the USTR's 2003 report states that "little progress has been achieved."²⁵⁹

In 2003, another SPS issue arose concerning soybeans. China announced in August 2003 that, due to detection of *Phytophthora sojae* in shipments from the Spring of 2003, it planned to suspend soybean imports from four companies trading US soybeans. The US Government raised concerns about China's announcement for several reasons: first, there appeared to be no

²⁵⁴ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 199.

²⁵⁵ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 200.

²⁵⁶ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 47 (December 11, 2003).

²⁵⁷ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 47 (December 11, 2003).

²⁵⁸ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 46 (December 11, 2003).

²⁵⁹ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 47 (December 11, 2003).

legitimate purpose for China's delay in making the announcement; second, China failed to set a date for the suspension; and, third, it appeared that China's action was intended to "disrupt the importation of U.S. soybeans, and not to address a legitimate phytosanitary concern."²⁶⁰ The US sought high-level meetings with China regarding this issue, and, in September 2003, China agreed to future technical level meetings between US and Chinese agricultural experts. In the interim, China agreed not to impose any suspensions.²⁶¹ Subsequently, it was reported that the US and China would again meet on this issue in March 2004.²⁶²

(h) Intellectual Property Rights

In the period before WTO accession, China made important amendments, revisions and improvements to its framework of intellectual property rights (IPR) laws, including copyright, trademark and patent laws, in order to bring its laws into conformity with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). China's efforts in this regard were reviewed in the Report of the Working Party.²⁶³

Upon accession to the WTO, China committed to abide by the provisions of the TRIPS Agreement, which effectively meant that China agreed to follow internationally-accepted norms for the protection and enforcement of the intellectual property rights of foreign companies and

²⁶⁰ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 47 (December 11, 2003).

²⁶¹ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 47 (December 11, 2003).

²⁶² See U.S., *China Plan March Soybean Phytophthora Meeting*, INSIDE US-CHINA TRADE, January 28, 2004:

U.S. and Chinese officials are hoping to meet sometime in March to discuss China's claims that some U.S. exports of soybeans contain phytophthora [T]he U.S. is expected to argue that China's claims are unjustified and not based on sound science.

²⁶³ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at paras. 251-252.

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individuals (including those from the US) in China.²⁶⁴ Among other provisions, the WTO

TRIPS Agreement:

- sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs and undisclosed information;
- sets minimum standards for the enforcement of intellectual property rights in administrative and civil actions;
- sets minimum standards, with regard to copyright piracy and trademark counterfeiting, for the enforcement of intellectual property rights in criminal actions and actions at the border;
- requires that, subject to limited exceptions, WTO Members provide national and MFN treatment to the nationals of other WTO Members with regard to protection and enforcement of intellectual property rights.

Since accession, the general assessment is that China has largely done a satisfactory job with respect to amending its IPR laws to comply with the TRIPS Agreement and bringing its laws into line with international norms in most key areas. In its 2003 compliance report, USTR states that China has continued to make improvements in its IPR legal framework. USTR notes that, in 2003, China issued new measures concerning patents, trademarks, and copyrights which moved China further toward full compliance with its TRIPS Agreement obligations.²⁶⁵

With respect to effective enforcement of intellectual property rights, however, the general consensus is that China has failed to comply with its commitments to adhere to its TRIPS Agreement obligations. China is required by the TRIPS Agreement to implement effective

²⁶⁴ See generally Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001) at paras. 251-305 (regarding China's intellectual property rights commitments).

²⁶⁵ See USTR, 2003 Report To Congress On China's WTO Compliance, at 50 (December 11, 2003). The new laws cited are (1) *Amendments to the Patent Law Implementing Measures*; (2) *Rules on the Determination and Protection of Well-Known Trademarks*; (3) *Measures on the Implementation of the Madrid Agreement on Trademark International Registration*; (4) *Measures on the Registration and Administration of Collective Trademarks and Certification Marks*; (5) *Measures on the Implementation of Administrative Penalties in Copyright Cases*.

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enforcement procedures and to provide civil and criminal remedies that have a deterrent effect.²⁶⁶

China's efforts in the area of IPR enforcement have fallen short of its commitments.

The reality is that piracy and counterfeiting remain rampant in China. The cost of ineffective IPR enforcement has been enormous. USTR observes that:

[A]ccording to a July 2003 report by the State Council's Development Research Center, the market value of counterfeit goods in China is between \$19 billion and \$24 billion, which translates into enormous losses for IPR rights holders. Various U.S. copyright holders report, for example, that inadequate enforcement has resulted in piracy levels in China that have remained at 90 percent or above in 2003 for all copyright sectors, and estimated U.S. losses due to the piracy of copyrighted materials has continued to exceed \$1.8 billion annually.²⁶⁷
{Emphasis added}

And, as USTR notes, IPR infringement in China has affected a wide spectrum of "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, among many others."²⁶⁸

China's IPR enforcement framework involves three avenues for action -- administrative enforcement, criminal prosecution, and civil actions for monetary damages. To date, each of these avenues, particularly administrative and criminal enforcement, have been ineffective and

²⁶⁶ In particular, Articles 41 (general obligations) and 61 (criminal procedures) of the TRIPS Agreement mandate effective enforcement of IPR.

²⁶⁷ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 50-51 (December 11, 2003).

²⁶⁸ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 51 (December 11, 2003). See also USTR, *2004 Trade Policy Agenda and 2003 Annual Report of the President of the United States on the Trade Agreements Program* (March 2004), at 164: "IPR problems are pervasive, covering the widespread production, distribution and enduse of counterfeit and pirated products, brands and technologies. Violations include the rampant piracy of film, music, publishing and software products, infringement of pharmaceutical, chemical, information technology and other patents, and counterfeiting of consumer goods, electrical equipment, automotive parts and industrial products."

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have not deterred IPR violations. Although the US has actively engaged in bilateral activities such as seminars and other technical assistance to improve China's IPR enforcement, it is the consensus of US industry "that credible criminal penalties and greater administrative penalties, with strong financial support and leadership from the central government, will be essential to reducing counterfeiting and piracy rates in China."²⁶⁹

In the 2003 compliance report, USTR identifies reasons that China's IPR enforcement efforts are ineffective. With regard to administrative enforcement, although China periodically conducts anti-counterfeiting and anti-piracy campaigns, such campaigns fail to be effective because:

- the cases brought usually result in extremely low fines;
- fines are kept artificially low because many administrators set low value for counterfeit or pirated goods rather than the value of the genuine articles;
- even if a person is caught warehousing infringing goods, China does not consider this sufficient evidence to prove an intent to sell them, which results in lower fines;
- administrators rarely forward an administrative case to the Ministry of Public Security for criminal investigation, even for commercial-scale counterfeiting or piracy;
- IPR infringers consider seizures and fines by the Government to be simply a cost of doing business;
- IPR infringers are usually able to resume their operations without much difficulty.²⁷⁰

With regard to China's criminal enforcement efforts, USTR states that it has "virtually no deterrent effect on infringers" because:

- authorities have pursued criminal prosecutions in only a small number of cases;
- lack of transparency makes it difficult to know the outcome of cases and whether penalties were imposed;
- criminal liability thresholds are very high and seldom met;
- to bring a criminal action, sales must total RMB 200,000 (\$24,100) for enterprises and RMB 50,000 (\$6,030) for individuals;

²⁶⁹ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 51 (December 11, 2003).

²⁷⁰ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 52 (December 11, 2003).

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- the proof-of-sale requirement is unworkable because it does not apply to warehoused but unsold counterfeit or pirated goods, and because infringers are unlikely to keep detailed sales records.²⁷¹

In order to address its IPR enforcement shortcomings, USTR urges China to take the following actions:

- begin to refer administrative cases to the Supreme People's Procuratorate for criminal prosecution;
- revise its IPR legal framework to provide for substantially higher administrative fines;
- administrative authorities should impose and publicize fines so they will act as a deterrent;
- revise its criminal liability thresholds;
- broaden its laws and regulations so they apply to the willful manufacture, storage, distribution and use of counterfeit and pirated goods, and not only when a sale can be proved;
- allow criminal prosecutions of the export of counterfeit or pirated goods on a commercial scale;
- increase criminal penalties (as current prison terms are too low to deter infringers engaged in commercial-scale counterfeiting or piracy).²⁷²

With respect to civil enforcement of IPR violations, USTR reports that there has been an increase in the number of civil actions being brought for monetary damages and injunctive relief by both Chinese parties as well as foreign parties, due in part to the ineffectiveness of the administrative and criminal enforcement avenues.²⁷³ However, the civil enforcement route has proven to be effective, either. In the civil courts, many judges lack necessary technical training, cases can often take years to complete, and the results have not been consistent.

One recent and prominent example that illustrates the ineffectiveness of enforcement of intellectual property rights through a civil action is the trademark infringement case brought by Toyota. In that case, Toyota sued a Chinese car maker, Geely, for using a logo that Toyota

²⁷¹ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 52-53 (December 11, 2003).

²⁷² See USTR, *2003 Report To Congress On China's WTO Compliance*, at 52-53 (December 11, 2003).

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claimed was confusingly similar to Toyota's logo. Toyota asked for injunctive relief, monetary damages, and recognition of its name and logo as well-known trademarks. The court rejected Toyota's claims:

"The logo of Geely Group's Merry (the model name of an economy car produced by the company) is obviously different from that of Toyota, and thus cannot cause any confusion," said the final judgment.²⁷⁴

(A Chinese-language copy of the *Toyota* court decision is attached as Appendix 13.) The *Toyota* decision has been viewed as a set back for IPR protection and enforcement in China.²⁷⁵ However, it is unclear what effect the *Toyota* decision may have on other trademark infringement cases under consideration by other automakers.²⁷⁶

²⁷³ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 53-54 (December 11, 2003).

²⁷⁴ *Japanese carmaker loses suit*, CHINA DAILY, November 25, 2003; available at http://www1.chinadaily.com.cn/en/doc/2003-11/25/content_284444.htm. See also *Toyota loses trademark suit against China carmaker*, INTERNATIONAL HERALD TRIBUNE ONLINE, November 24, 2003 ("Toyota Motor on Monday lost a trademark lawsuit against Geely Group, China's biggest private carmaker, in a case that had been closely watched by overseas companies concerned about protecting their designs and logos in the mainland market."); available at <http://www.iht.com/articles/118787.html>.

²⁷⁵ See, e.g., *China High Tech PR Newsletter*, December 2003 ("Although a victory for Geely, the court ruling is seen as a major setback for multinationals doing business in China and trying to protect their Intellectual Property Rights (IPR)."), available at <http://www.chinahightechpr.com/fullArticle.cfm?code=294>.

²⁷⁶ For example, GM has alleged IPR infringement of its car models in China. See *China vows to solve IPR disputes between automaker GM, SAIC Chery*, PEOPLE'S DAILY, December 4, 2003; available at http://english.peopledaily.com.cn/200312/04/eng20031204_129676.shtml. See also *Toyota loses trademark suit against China carmaker*, INTERNATIONAL HERALD TRIBUNE ONLINE, November 24, 2003 ("The court decision came a setback for other automakers, including General Motors, which has said it is "investigating" whether Chery Automobile's QQ minicar resembles the Chevrolet Spark."); available at <http://www.iht.com/articles/118787.html>. Another report states: "Counterfeiting - usually just of parts - is driving carmakers crazy in China." Joann Muller, *Stolen Cars: The nerve! The pirates of Shanghai are knocking off entire motor vehicles*, FORBES.COM, February 16, 2004; available at http://www.forbes.com/forbes/2004/0216/058_print.html.

(i) Subsidies

Export subsidies

In the accession protocol and working party report, China committed that, upon accession, it would eliminate all export subsidies on both industrial and agricultural products.²⁷⁷

However, despite China's WTO commitments, USTR reports that, during 2002 and 2003, China continued to allow export subsidies for agricultural products, particularly corn and cotton. In its 2002 report, USTR noted that US industry had expressed concern about China's continued use of export subsidies for corn and cotton.²⁷⁸ In the 2003 report, USTR noted that China appeared to continue to grant export subsidies for corn, to the detriment of US exporters.

It appears that significant quantities of corn have been exported from China, including corn from Chinese government stocks, at prices that may be 15 to 20 percent below domestic prices in China. As a result, U.S. corn exporters have lost market share for corn in their traditional Asian markets, such as South Korea and Malaysia, while China is exporting record amounts of corn. In 2003, China's already high level of corn exports increased by 80 percent.²⁷⁹

²⁷⁷ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Item 10.3 ("China shall eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement upon accession.") and Item 12.1 ("China shall implement the provisions contained in China's Schedule of Concessions and Commitments on Goods and, as specifically provided in this Protocol, those of the Agreement on Agriculture. In this context, China shall not maintain or introduce any export subsidies on agricultural products.").

See also *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 167 ("The representative of China confirmed, as provided in Section 10.3 of the Draft Protocol, that it would eliminate all export subsidies, within the meaning of Article 3.1(a) of the SCM Agreement, by the time of accession. To this end, China would, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes.").

²⁷⁸ See USTR, *2002 Report To Congress On China's WTO Compliance*, at 33 (December 11, 2002).

²⁷⁹ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 48 (December 11, 2003).

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In response to China's actions, the US raised its concerns about export subsidies with China on a bilateral level and at the WTO as part of the 2002 and 2003 TRM reviews before the Committee on Agriculture. However, to date, this matter has not been resolved, in part because China has not provided information about its corn policies in response to USTR requests for such information.²⁸⁰ Indeed, it is difficult to ascertain whether China has in fact eliminated any export subsidy given that, for the last two years, China has failed to submit its required annual subsidy notification to the WTO's Committee on Subsidies and Countervailing Measures.²⁸¹

In addition to export subsidies on agricultural products, US industry has charged that China continues to grant export subsidies to industrial products, such as high technology electronics, biomedicine, new materials and integrated circuits.²⁸² USTR has noted, however, that "China's possible export subsidies on industrial goods are difficult to identify and quantify because they are most often the result of internal administrative measures and not publicized or they may be provided through mechanisms such as credit allocations or low-interest loans," or take such forms as "guaranteed provision of energy, raw materials or labor supplies."²⁸³

It appears that China also provides tax relief to foreign investors that is export contingent. In the 2003 TRM of China conducted by the WTO's Committee on Subsidies and Countervailing Measures, China confirmed that it uses its tax laws to encourage the formation of wholly foreign-owned enterprises that are export-oriented.²⁸⁴ Although this specific tax program has not been

²⁸⁰ See USTR, *2003 Report To Congress On China's WTO Compliance*, at 48 (December 11, 2003).

²⁸¹ See WTO Committee on Subsidies and Countervailing Measures, *Chair's Report to the Council for Trade in Goods on Transitional Review of China*, G/SCM/111 (4 November 2003) at 3.

²⁸² USTR, *2003 National Trade Estimate Report on Foreign Trade Barriers* at 58.

²⁸³ USTR, *2003 National Trade Estimate Report on Foreign Trade Barriers* at 58.

²⁸⁴ See WTO Committee on Subsidies and Countervailing Measures, *Chair's Report to the Council for Trade in Goods on Transitional Review of China*, G/SCM/111 (4 November 2003) at 5. Specifically, China exempts

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investigated as a possible export subsidy, such tax programs have been deemed to be export subsidies by the Department of Commerce where they provided a benefit (deferral of direct taxes) that was contingent upon exports.²⁸⁵

Domestic subsidies

In its accession agreement, in addition to committing to eliminate all subsidy programs that would be prohibited under Article 3 of the SCM Agreement (*i.e.*, subsidies contingent on export performance (export subsidies) and subsidies contingent on the use of domestic over imported goods (import substitution subsidies), China also committed to phasing out three subsidy programs: (1) subsidies provided to certain state-owned enterprises which are running at a loss (to be terminated by end of 2000); (2) priority in obtaining loans and foreign currencies based on export performance (to be terminated by end of 2000); and (3) preferential tariff rates based on localization rate of automotive production (to be terminated by end of 2000).²⁸⁶

It appears that China may not have eliminated the subsidies it committed to phasing out. The National Association of Manufacturers has noted that China continues to use subsidies widely, and often through assistance to state-owned enterprises (SOEs) running at a loss:

wholly foreign-owned enterprises that are export-oriented from paying income tax for a certain period of time, which is followed by an additional period during which the enterprise is entitled to a 50 percent rebate of income tax. Enterprises located in special economic zones, or economic and technology development zones, or any other exporting enterprises that already enjoyed an income tax rate of 15 per cent, would pay income tax at the rate of 10 per cent if they also met certain requirements.

²⁸⁵ See, e.g., *Oil Country Tubular Goods from Korea*, 49 Fed. Reg. 46776 (Nov. 28, 1984) (“Articles 22, 23 and 24 of the “Act Concerning the Regulation of Tax Reduction and Exemption” provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of the foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.”)

²⁸⁶ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 5B (Subsidies to be Phased Out).

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Subsidized Exports -- We continue to receive reports from different industries that Chinese products are being sold in the United States at prices so low that they could not even cover the cost of raw materials and shipping much less full production and marketing costs. These reports suggest the possibility of widespread use of subsidies, either direct or indirect, to help Chinese exporters gain a competitive advantage in the U.S. market. One important source of indirect subsidy is continued bank lending to money-losing and insolvent Chinese manufacturers, often state-owned or state-controlled enterprises. Since the Chinese banks providing these loans are either state-owned or state-controlled, the Chinese government bears responsibility for their lending practices.²⁸⁷ {Emphasis added}

When government subsidies are provided to domestic producers -- for example, steel companies -- the likely result is expanded capacity and overproduction, which in turn leads to severe market distortions such as price instability and dumping.²⁸⁸

As part of its WTO accession process, China agreed to notify all of its subsidies that are included within the meaning of Article 1 of the WTO SCM Agreement.²⁸⁹ In Annex 5A to both the Accession Protocol and the Working Party Report, China provided notification of its subsidies pursuant to Article 25 of the SCM Agreement. Annex 5A provides information on twenty-four subsidy programs. The first subsidy program listed in Annex 5A is "Subsidies From Central Budget Provided To Certain State-Owned Enterprises Which Are Running At A

²⁸⁷ Testimony of Franklin J. Vargo, Vice President, International Economic Affairs, National Association of Manufacturers, On Behalf of The National Association of Manufacturers Before the House Committee on International Relations, *Hearing On U.S.-China Ties: Reassessing the Economic Relationship*, October 21, 2003.

²⁸⁸ China's steel industry, which is now the largest in the world, has been and continues to be the beneficiary of government support. Continued subsidization of the Chinese steel industry has fostered massive capacity increases in China that are not driven by rational market signals. The massive capacity expansion in China will exacerbate the problem of global excess capacity and lead to increased exports of Chinese steel products when demand in China diminishes. See, e.g., *Comments of American Iron and Steel Institute (AISI) to U.S. Trade Representative Concerning China's Compliance with WTO Commitments*, Sept. 9, 2002; available at www.steel.org/policy/trade/st_020909.asp.

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Loss."²⁹⁰ Nine sectors are identified as receiving subsidies under this program, one of which is the "ferrous-metal industry."²⁹¹ China's notification, however, only provided information on this program up to 1998 and indicated that the program was to end in 2000.²⁹² However, whether in fact China has ended this or any other enumerated program is not known because China has not yet supplemented its accession notification, and has not submitted any of the semi-annual subsidy notifications called for in the SCM Agreement.

China's lack of transparency in reporting its subsidies, and particularly with respect to subsidies provided to state-owned enterprises running at a loss, has been raised in the context of the annual TRM process at the WTO. In the most recent TRM (2003), the US noted China's failure to notify its subsidies and specifically asked China to clarify whether subsidies to state-owned enterprises running at a loss had been ended. Until China clearly demonstrates that it has phased out this, and other, subsidy programs that it agreed to end, it cannot be said that China is in compliance with its accession commitments.

8. In the area of subsidies, the delegate of the United States stated that the United States was disappointed with China's failure to submit its annual subsidy notification, required under Article 25.1 of the Subsidies Agreement. In fact, China had not made an Article 25.1 notification since joining the WTO nearly two years ago. The United States urged China to submit a new and full notification of its subsidies as soon as possible and, in any event, China should immediately notify what it could, even if such a notification was not comprehensive. By not participating in the notification process, China undermined the transparency that

²⁸⁹ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Item 10.1.

²⁹⁰ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 5A, item I.

²⁹¹ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 5A, item I.

²⁹² See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Annex 5B (Subsidies to be Phased Out).

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Members had worked hard to develop and hampered the ability of Members to confirm that China was complying with its obligations under the Subsidies Agreement and its Protocol of Accession.

9. In the view of the United States, an example of the uncertainty that China's lack of notification fostered concerned subsidies provided to certain state-owned enterprises which were running at a loss. According to China's Protocol of Accession, this subsidy was to end in 2000. The representative of China had told the SCM Committee the previous year that the programme had been eliminated in 2001. However, the delegate of the United States stated that, according to recent Chinese press reports, the Government was currently working to eliminate this programme. He explained that by providing more detailed information on the programme, such as the decrees that ended or would end the programme at the central and local levels, China would help dispel confusion among other Members concerning the status of these subsidies.²⁹³ {Emphasis added}

Moreover, China's recent injection of \$US 85 billion into three of the largest banks in China in order to bail them out from failing loans raises questions as to whether China has phased out subsidies to support state-owned enterprises operating at a loss. One news reports noted:

The Chinese government will pump around 40 billion dollars into the Industrial and Commercial Bank of China (ICBC) in the latest move to bail out its ailing banking sector, state media reported.

The cash injection from foreign exchange reserves is much larger than the 22.5 billion dollars each given to the Bank of China and China Construction Bank last week, the Business Post reported citing various banking sources.

* * *

An official at the People's Bank of China, the central bank, was quoted in the Chinese report as saying a total of about 120 billion

²⁹³ WTO Committee on Subsidies and Countervailing Measures, *Chair's Report To The Council For Trade In Goods On Transitional Review Of China*, G/SCM/111 (4 November 2003) at paras. 8-9.

dollars would be injected into the big four state-owned banks to clean up their balance sheets and prepare them for listing.

That would leave 35 billion dollars for the Agricultural Bank of China, widely seen as the weakest of the big four and which the CBRC does not think will be ready for listing until 2007.

Analysts have long speculated that Beijing would be forced to inject public funds to rescue the debt-ridden sector that for years handed out easy loans to China's money-losing state enterprises.

It is estimated that NPLs account for about 45 percent of all loan assets in China's banking system although official figures put the bad debt at just under 17 percent.²⁹⁴

While it is the case that the United States can raise issues concerning China's subsidies within the WTO, the US should also review its present approach to Chinese subsidies under US countervailing duty law. For the reasons reviewed in the memorandum attached as Appendix 14, the US Department of Commerce has the discretion to revise its handling of countervailing duty issues for non-market economy countries such as China. Should Commerce not make such modifications, then Congress should mandate a change through appropriate legislation.

D. U.S. Use of Transitional Rights (textile safeguards; Section 421; AD NME status)

1. Protocol of accession provisions

The protocol on China's accession, as well as the working party report, include special provisions unique to China's accession to the WTO that apply to the transitional period following China's accession. First, there is available to WTO members a special safeguard provision

²⁹⁴ Channelnewsasia, *China to inject 40 billion dollars into state bank: report*, January 12, 2004; http://www.channelnewsasia.com/stories/afp_asiapacific_business/view/65892/1/.html.

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applicable to textile and apparel products in order to deal with market disruption due to increased imports of Chinese textile and apparel products. Second, WTO members may apply a product-specific transitional safeguard to deal with import surges of particular products from China that cause market disruption.

Textile safeguards

Upon accession, China became a party to the Agreement on Textiles and Clothing (ATC). As such, China is subject to the rights and obligations of the ATC, including quotas. The ATC, and the textile and apparel quotas under the ATC, will expire on December 31, 2004. However, the special textile safeguard mechanism that China agreed to as part of its accession commitments will be applicable through the end of 2008.

The working party report to China's accession (at paragraph 242)²⁹⁵ sets out the terms of the special textile safeguard. Under that provision, if a WTO Member believes (and can show) that imports of certain Chinese textile and apparel products are “threatening to impede orderly development of trade in these products” due to “market disruption,” the WTO Member can request consultations with China “with a view to easing or avoiding such market disruption.”²⁹⁶ The scope of products for which this regime applies includes those textile and apparel products covered by the ATC as of the date the WTO Agreement entered into force, that is, January 1, 1995. Upon receipt of a request, China has agreed to “hold its shipments ... to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding” the request.²⁹⁷ Consultations would be

²⁹⁵ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242.

²⁹⁶ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(a).

²⁹⁷ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(c).

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held within 30 days of the request with the aim of reaching a "mutually satisfactory solution" within 90 days of the request.²⁹⁸ If no solution can be reached, consultations, and export restraints, continue.²⁹⁹

There is a time limit on the application of special textile safeguards. Export restraints may be applied from the date that consultations are requested through December 31 of that year. If, however, three or fewer months remain in that year, then the export restraints may stay in place for up to one year from the date of the request for consultations.³⁰⁰ In general, no export restraint may last longer than one year unless it is reapplied through further consultations, or otherwise agreed to by China and the WTO member.³⁰¹ The special safeguard provision, itself, expires on December 31, 2008.³⁰²

In addition to time limits, another limitation applies to the special textile safeguard. A measure under the special textile safeguard provision may not be applied to the same product at the same time as a measure under the accession protocol's "transitional product-specific safeguard mechanism" (Article 16 of the protocol of accession; referred to as "Section 421" in U.S. law). However, a WTO member could apply a special textile safeguard measure and a regular safeguard measure under GATT Article XIX and the WTO Agreement on Safeguards to the same product at the same time.

Under the special textile safeguard provision, a WTO Member can request consultations and secure export restraints by showing that imports from China are "threatening to impede

²⁹⁸ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(b).

²⁹⁹ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(d).

³⁰⁰ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(e).

³⁰¹ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), para. 242(f).

orderly development of trade in these products” due to “market disruption.” The standard of injury required here -- “market disruption” -- is less stringent than the “serious injury” test of a regular safeguard action under GATT Article XIX and the WTO Agreement on Safeguards. The consultative procedure of the special textile safeguard was established as a less formal means of temporarily limiting the impact on WTO members of increased Chinese textile and apparel imports. Thus, it should be easier for WTO Members to use the special textile safeguard than the regular safeguard mechanism.

The box below shows the working party report commitments agreed to by China with respect to textiles and apparel.

Special Textile Safeguards
Working Party Report, WT/MIN(01)/3 (10 November 2001)

11. Textiles

241. Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase "day prior to the date of entry into force of the WTO Agreement", contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession. To these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession. The Working Party took note of these commitments.

242. The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession:

- (a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;
- (b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach

³⁰² *Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001), para. 242.*

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agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;

- (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
- (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
- (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
- (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and
- (g) Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Draft Protocol.

The Working Party took note of these commitments.

Product-Specific Safeguards

In addition to the textile specific export restraint mechanism, China's accession protocol provides for a general "product-specific special safeguard" measure, which is applicable to any type of product (*i.e.*, industrial and agricultural goods) and will be available to the U.S. (and other WTO Members) for 12 years following China's accession to the WTO, that is, until December 11, 2013. This measure will allow the United States to take action necessary to curtail imports of Chinese goods that cause or threaten to cause "market disruption" to the domestic industry producing such goods.

The transitional product-specific safeguard is unique to China. Before China, no other acceding country (either to GATT or the WTO) has been subject to a transitional product-specific safeguard. The product-specific safeguard mechanism was applied to China, however, because the WTO members recognized that, even though China was admitted to the WTO in

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December 2001, China still remained a long way from fully meeting all obligations of WTO membership. As a measure of protection for other WTO Members during China's transition to full acceptance of all WTO obligations, the product-specific safeguard allows existing WTO members to bring a China-only safeguard action where there is market disruption from increased imports from China. This is an exception from the normal rules governing safeguard actions (*i.e.*, Article XIX of GATT 1994 and the WTO Agreement on Safeguards) which require that safeguard actions be brought against imports from all countries.

A product-specific safeguard measure is not the only means to address cases where products of Chinese origin are being imported into the territory of a WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The Protocol provides that WTO Members affected by market disruption caused by increased Chinese imports may request consultations with China with a view to seeking a mutually satisfactory solution.³⁰³ If such consultations conclude that Chinese imports are causing market disruption and action is necessary, China "shall take such action as to prevent or remedy the market disruption."³⁰⁴ If, however, consultations do not lead to a mutually satisfactory solution within 60 days of the date of request for consultations, then the WTO member is to take action to prevent or remedy the market disruption through the imposition of a product-specific safeguard measure.³⁰⁵

The injury standard underlying a product-specific safeguard is "market disruption." "Market disruption" exists wherever imports of an article, like or directly competitive with an

³⁰³ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 16.1.

³⁰⁴ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 16.2.

³⁰⁵ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) art. 16.3.

article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry.³⁰⁶ This “material injury” standard is substantially less than the “serious injury” standard of a typical safeguard action.

In the case of critical circumstances, where delay would cause damage that would be difficult to repair, provisional safeguard measures can be imposed (for up to 200 days) pursuant to a preliminary determination that imports have caused or threatened to cause market disruption.³⁰⁷ If a WTO Member considers that a product-specific safeguard measure taken by another WTO Member causes or threatens to cause significant diversions of trade into its market, that Member may seek consultations with China and/or the other WTO Member concerned.³⁰⁸ If such consultations do not resolve the problem, then the WTO Member may take action to the extent necessary to prevent or remedy the trade diversions at issue.³⁰⁹

Measures imposed under the product-specific safeguard mechanism may be in place for two years where there has been a relative increase in imports, and three years where the increase is absolute. After these respective periods, China is permitted to “retaliate” by suspending substantially equivalent concessions or obligations under the WTO Agreement.³¹⁰

The boxes below shows the protocol and working party report commitments agreed to by China concerning the product-specific transitional safeguard.

³⁰⁶ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), art. 16.4.

³⁰⁷ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), art. 16.7.

³⁰⁸ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), art. 16.8.

³⁰⁹ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), art. 16.8.

³¹⁰ *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001), art. 16.6.

Transitional Product-Specific Safeguards
Protocol on Accession, WT/L/432 (23 November 2001)

16. Transitional Product-Specific Safeguard Mechanism

1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards.
2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards.
3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards.
4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products.
5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration.
6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards.
7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened to cause market disruption. In this case, notification of the measures taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6.
8. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause

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significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards.

9. Application of this Section shall be terminated 12 years after the date of accession.

Working Party Report, WT/MIN(01)/3 (10 November 2001)

13. Transitional Safeguards

245. With respect to implementation of the product-specific safeguard, the representative of China expressed particular concern that WTO Members provide due process and use objective criteria in determining the existence of market disruption or trade diversion, because WTO Members did not have wide experience in implementing the provisions of Section 16 of the Draft Protocol. He stated that with respect to trade diversion, WTO Members needed to apply objective criteria to determine whether an action by China or another WTO Member under the product-specific safeguard to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Such criteria should include the actual or imminent increase in market share or volume of imports from China, the nature or extent of the action taken by China or the other WTO Member and other similar criteria. In addition, WTO Members should provide an opportunity for importers, exporters and all interested parties to submit their views on the matter.

246. Members of the Working Party noted that the Draft Protocol included specific requirements that WTO Members needed to follow in connection with an action under that Section. Members of the Working Party confirmed that in implementing the provisions on market disruption, WTO Members would comply with those provisions and the following:

- (a) An action to address market disruption would be taken only after an investigation by the competent authorities of the importing WTO Member pursuant to procedures previously established and made available to the public;
- (b) The competent authority of the importing Member would publish notice of the commencement of any investigation under the product-specific safeguard provisions of the Draft Protocol and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting interested parties to present evidence and their views as to the appropriateness of whether or not to take a measure and to respond to the presentations of other parties;
- (c) In determining whether market disruption existed, including the causal link between imports which were increasing rapidly, either absolutely or relatively, and any material injury or threat of material injury to the domestic industry, the competent authorities would consider objective factors, including (1) the volume of imports of the product which was the subject of the investigation; (2) the effect of imports of such product on prices in the importing WTO Member's market for the like or directly competitive products; (3) the effect of imports of such product on the domestic industry producing like or directly competitive products;
- (d) The competent authorities would publish any measure proposed to be taken and provide the opportunity, including a public hearing, if requested, or provide other appropriate means, for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest;

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- (e) The competent authority would promptly publish notice of the decision to apply a measure, including an explanation of the basis for the decision and the scope and duration of the measure;
- (f) The period of application of the measure could be extended, provided that the competent authorities of the importing WTO Member had determined that action continued to be necessary to prevent or remedy market disruption. The competent authorities of the importing WTO Member would publish notice of the commencement of any proceeding to consider whether to extend the duration of an action and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting all interested parties to have an opportunity to present evidence or their views and to respond to the presentations of other parties;
- (g) Except for good cause, no investigation under Section 16 of the Protocol on the same subject matter could be initiated less than one year after the completion of a previous investigation; and
- (h) A WTO Member would apply a measure only for such period of time as was necessary to prevent or remedy market disruption.

247. Trade diversion referred to an increase in imports from China of a product into a WTO Member as the result of an action by China or other WTO Members pursuant to paragraphs 2, 3 or 7 of Section 16 of the Draft Protocol. Members of the Working Party also noted that the Draft Protocol required a determination that any trade diversion was significant and that the action taken to address market disruption had caused or threatened to cause the diversion.

248. Members of the Working Party agreed that objective criteria had to be applied in determining whether actions to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Among the factors to be examined were:

- (a) the actual or imminent increase in market share of imports from China in the importing WTO Member;
- (b) the nature or extent of the action taken or proposed by China or other WTO Members;
- (c) the actual or imminent increase in the volume of imports from China due to the action taken or proposed;
- (d) conditions of demand and supply in the importing WTO Member's market for the products at issue; and
- (e) the extent of exports from China to the WTO Member(s) applying a measure pursuant to paragraphs 2, 3 or 7 of Section 16 of the Draft Protocol and to the importing WTO Member.

249. A measure taken to address significant diversions of trade would be terminated not later than 30 days after the expiration of the action taken by the WTO Member or Members involved against imports from China.

250. If the WTO Member or Members taking an action to address market disruption notified the WTO Committee on Safeguards of any modification of an action, the competent authorities of the WTO Member addressing trade diversion would determine whether a significant diversion of trade continued to exist and determine whether to modify, withdraw or keep in place the action taken.

2. U.S. implementing provisions or existing laws

Special Textile Safeguards

The special China safeguard for textiles took effect in December 2001 upon China's accession to the WTO. On May 21, 2003, the Committee to Implement Textile Agreements ("CITA"), the official U.S. government entity responsible for administering the *Agreement on Textiles and Clothing* ("ATC"), promulgated the procedures for bringing a special safeguard action to seek relief from Chinese imports.³¹¹

The Committee for the Implementation of Textile Agreements (CITA) is an interagency group responsible for matters affecting textile trade policy and for supervising the implementation of all textile trade agreements.³¹² CITA administers the phase-out of textile and apparel quotas on WTO countries required to be completed by January 1, 2005 under the ATC. CITA was established by the President in Executive Order 11651 on March 3, 1972 and is comprised of the Departments of Commerce, State, Labor, and Treasury and the Office of the U.S. Trade Representative.³¹³ CITA is chaired by the Commerce Department's Deputy Assistant Secretary for Textiles, Apparel, and Consumer Goods Industries.

³¹¹ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. 27787 (CITA, May 21, 2003).

³¹² See <http://otexa.ita.doc.gov/cita.htm>.

³¹³ CITA also coordinates the administration's efforts to combat illegal textile and apparel transshipment; it implements the short supply and other provisions of the African Growth and Opportunity Act and the United States Caribbean Basin Trade Partnership Act; and it takes textile and apparel safeguard actions, when appropriate, under the WTO Agreement on Textiles and Clothing (ATC) and the North American Free Trade Agreement. The Commerce Department's Office of Textiles and Apparel (OTEXA) provides the staff support for the Committee, monitors all agreements and provides economic analysis and statistical data upon which the Committee relies in taking action.

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Implementation of the special textile safeguard in U.S. law through issuance of regulations did not occur until nearly 17 months after China's accession. This delay was costly to U.S. interests. According to the American Textile Manufacturers Institute, in the period before CITA issued its regulations, imports of Chinese textile and apparel products increased more than 165%, 50 U.S. textile plants closed, and some 39,000 textile workers lost their jobs.³¹⁴

Under the procedures issued by CITA, a domestic interested party may file a request for a textile/apparel safeguard. Eligible requesters are those entities (including a trade association, firm, certified or recognized union, or group of workers) that are representative of (1) a domestic producer or producers of a product that is like or directly competitive with the subject Chinese textile or apparel product, or (2) a domestic producer or producers of a component used in the production of a product that is like or directly competitive with the subject Chinese textile or apparel product.³¹⁵ In addition, CITA may, on its own initiative, consider whether increased imports of Chinese-origin textile and apparel products are causing market disruption and threatening to impede orderly development of trade in such products.³¹⁶

CITA will consider requests only if they contain certain specified information. The required information concerns the following:

- (1) Product description of the product, including the applicable category under the U.S. Textile and Apparel Category System, the applicable subheading under the

³¹⁴ See ATMI News Release, *ATMI Says U.S. Must Use the Safeguard or Risk Unprecedented Upheaval*, (May 21, 2003).

³¹⁵ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27788.

³¹⁶ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

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U.S. Harmonized Tariff Schedule, and the name and description of the like or directly competitive domestic product.³¹⁷

- (2) Import data, in quantity by category unit, on total imports into the United States and imports from China into the United States. Both annual (most recent five calendar years) and quarterly (current and previous year) data are required, and the data should show imports from China increasing rapidly in absolute terms.³¹⁸
- (3) Production data, in quantity by category unit, on U.S. domestic production of the like or directly competitive products of U.S. origin indicating the nature and extent of market disruption. Both annual (most recent five calendar years) and quarterly (current and previous year) data are required.³¹⁹
- (4) Market share data, in quantity by category unit, on imports from China as a percentage of the domestic market, on total imports as a percentage of the domestic market, and on domestic production of like or directly competitive products as a percentage of the domestic market. Both annual (most recent five calendar years) and quarterly (current and previous year) data are required.³²⁰
- (5) Additional information as to how the textile and apparel product(s) have adversely affected the domestic industry, such as the effect of imports on prices in the United States.³²¹

Once a request is filed, CITA has up to 15 business days to decide whether the petition provides all the required information.³²² If CITA accepts the request, CITA issues a notice in the *Federal Register* soliciting public comments on the request and establishing a 30-day public

³¹⁷ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27788.

³¹⁸ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27788.

³¹⁹ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27788.

³²⁰ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²¹ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²² See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

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comment period.³²³ Once the comment period ends, CITA may take up to 60 days to decide whether to request consultations with China concerning the product that is the subject of the petition. If CITA is unable to decide whether to request consultations with China within the 60-day period, CITA publishes a notice in the *Federal Register* indicating the date by which it will decide whether to request consultations.³²⁴

If CITA determines not to request consultations, it will publish a notice of its determination and the reasons therefore in the *Federal Register*.³²⁵ If CITA makes an affirmative determination that imports of Chinese-origin textiles and apparel products are causing market disruption, CITA will request consultations with China with a view to easing or avoiding such market disruption.³²⁶ Within 30 days of the receipt of the request for consultations, CITA will hold consultations with China; and within 90 days of the receipt of the consultation request, CITA will attempt to reach agreement on a mutually satisfactory solution.³²⁷

Once China receives the requests for consultations, CITA will publish a notice in the *Federal Register* that such consultations have been requested, and will identify the quantitative

³²³ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²⁴ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²⁵ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²⁶ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²⁷ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

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limits on imports that are subject to the request for consultations.³²⁸ Absent a mutually satisfactory solution, the quantitative limits identified by CITA will terminate on December 31 of the year in which the request for consultations was made, unless three or fewer months remain in that year at the time of the request, in which case the limits will terminate one year from the date on which consultations were requested.³²⁹

Product-Specific Safeguard: Statute

Section 421 of the Trade Act of 1974, as amended, 19 U.S.C. § 2451, establishes a product-specific safeguard mechanism designed to address product-specific import surges from China that occur for any reason. This statutory provision implemented the agreement reached between the United States and China in the US-China Bilateral Trade Agreement by which China agreed to allow the United States to employ a temporary safeguard mechanism directed solely at products from China. This provision was incorporated into the Protocol of the Accession of China to the World Trade Organization, thereby allowing all WTO Members to employ the same product-specific safeguard mechanism to address import surges of products from China into their countries.³³⁰

The United States and China concluded their Bilateral Trade Agreement on November 15, 1999. In 2000, Congress enacted Public Law 106-286³³¹ which authorized the extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China.

³²⁸ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³²⁹ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27789.

³³⁰ See *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Article 16 ("Transitional Product-Specific Safeguard Mechanism").

³³¹ Pub. L. 106-286, October 10, 2000, 114 STAT. 880.

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Section 103 of P.L. 106-286 created a new chapter and a new section 421 of title IV of the Trade Act of 1974 to implement the anti-surge mechanism established under the U.S.-China Bilateral Trade Agreement. This special safeguard mechanism is codified at 19 U.S.C. § 2451. Congress intended that this provision would replace section 406 of the Trade Act of 1974 (applicable to market disruption by imports from communist countries), which, since China joined the WTO on December 11, 2001, does not apply to China. In February 2002, the U.S. International Trade Commission published interim rules implementing the new statutory authority.³³² Subsequently, on November 19, 2003, the ITC published amendments to its interim rules.³³³

Section 421 permits U.S. domestic industries and workers adversely affected by increased imports from China to seek relief. The procedure for initiating an action under Section 421 is similar to a traditional safeguard under Section 201 of the Trade Act of 1974. A petition for an investigation under section 421 must be filed by an entity (including a trade association, firm, certified or recognized union, or group of workers) that is representative of an industry claiming injury due to import surges from China.³³⁴ In addition to an interested party petition, the U.S. International Trade Commission may commence an investigation upon a request by the

³³² See *Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions*, 67 Fed. Reg. 8183-93 (interim rules with request for comments) (ITC February 22, 2002). The Commission noted that it was necessary to amend its rules in order to "implement provisions of Public Law 106-286 that require the Commission to conduct new types of investigations of market disruption or trade diversion and reviews of relief actions." *Id.* at 8183.

³³³ See *Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions*, 68 Fed. Reg. 65164-68 (interim rules with request for comments) (ITC November 19, 2003). The Commission noted that amendments were necessary "to respond to exigencies created by statutory time constraints and to address concerns created by the existing rules." *Id.* at 65164.

³³⁴ Section 421(b)(1); 19 U.S.C. § 2451(b)(1).

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President or the U.S. Trade Representative, a resolution of either the House Ways and Means or Senate Finance Committees, or upon its own initiative.³³⁵

The timeline for a Section 421 action is 150 days from commencement of the investigation to proclamation of relief, the same time period for a Section 406 investigation, but much shorter than for a normal Section 201 safeguards action. A Section 421 investigation is commenced as of the day the petition is filed or the request received. Within 60 days thereafter (90 days if critical circumstances are alleged), the ITC must determine whether the subject imports are causing or threatening market disruption.³³⁶ If critical circumstances are alleged, the ITC makes a preliminary determination within 45 days of the investigation's commencement whether market disruption exists and whether delay in taking action would cause damage which would be difficult to repair.³³⁷ If the Commission's preliminary determination is affirmative, within 20 days thereafter, the President shall determine whether to provide provisional relief, which shall be for a period not to exceed 200 days and be in the form of increased duties, a modification or imposition of any quantitative restriction on imports, or a combination thereof.³³⁸

The injury standard applicable to Section 421 investigations is "market disruption." According to the statute, market disruption exists when subject imports "are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury or threat of material injury to the domestic industry."³³⁹ In determining whether market disruption exists, the statute directs the Commission to consider objective factors, including: (1) the volume of imports

³³⁵ Section 421(b)(1); 19 U.S.C. § 2451(b)(1).

³³⁶ Section 421(e); 19 U.S.C. § 2451(e).

³³⁷ Section 421(i)(1); 19 U.S.C. § 2451(i)(1).

³³⁸ Section 421(i); 19 U.S.C. § 2451(i).

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of the product subject to the investigation; (2) the effect of imports of such product on prices in the United States of like or directly competitive articles, and (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles. The presence or absence of any of these factors, however, is not necessarily dispositive of whether market disruption exists.³⁴⁰

Within 20 days after determining whether the subject imports are causing or threatening market disruption, the ITC must submit a report to the President and the U.S. Trade Representative.³⁴¹ The Commission's report includes the determination, an explanation of the basis for the determination, and, if affirmative, recommendations on proposed remedies, an explanation of the basis for each recommendation, and a description of the short and long-term effects of implementing or not implementing the recommended remedial actions on the petitioning industry, other domestic industries, and on consumers.³⁴² Within 20 days after receiving the Commission's report, the U.S. Trade Representative must publish a notice of the remedy proposed to be taken and of the opportunity, including a public hearing if requested, for comment by interested parties.³⁴³ Within 55 days of receiving the Commission's report, the U.S. Trade Representative must make its recommendation to the President concerning what action, if any, to take to prevent or remedy market disruption.³⁴⁴

³³⁹ Section 421(c)(1); 19 U.S.C. § 2451(c)(1).

³⁴⁰ Section 421(d); 19 U.S.C. § 2451(d).

³⁴¹ Section 421(g)(1); 19 U.S.C. § 2451(g)(1).

³⁴² Section 421(g)(2); 19 U.S.C. § 2451(g)(2).

³⁴³ Section 421(h)(1); 19 U.S.C. § 2451(h)(1).

³⁴⁴ Section 421(h)(2); 19 U.S.C. § 2451(h)(2).

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The President is required by the statute to “provide import relief” within 15 days of receiving the U.S. Trade Representative's report.³⁴⁵ Import relief shall be in the form of “increased duties or other import restrictions.”³⁴⁶ Thus, if the Commission makes an affirmative determination on market disruption, there is a statutory presumption in favor of providing relief.³⁴⁷ This presumption can be negated only if the President determines that provision of relief is not in the “national economic interest of the United States,” or in “extraordinary cases” that relief would cause serious harm to U.S. national security.³⁴⁸ The President may find that relief action is not in the national economic interest of the United States “only if the President finds that the taking of such action would have an adverse impact on the U.S. economy clearly greater than the benefits of such action.”³⁴⁹ Thus, the President has limited discretion (subject to the limitations noted above) as to the remedy to be applied. As in a Section 201 case, given the President's discretion, the remedial measures ultimately applied in a Section 421 case may be subject to influence from Congress and other constituencies.

The statute also provides for a consultation track to prevent or remedy market disruption. If the Commission's determination respecting market disruption is affirmative, the statute provides that the U.S. Trade Representative should seek consultations with China with the aim of

³⁴⁵ Section 421(k)(1); 19 U.S.C. § 2451(k)(1).

³⁴⁶ Section 421(a); 19 U.S.C. § 2451(a).

³⁴⁷ See House Report No. 106-632, 106th Cong., 2d Sess. 18 (May 24, 2000) (emphasis added):

The bill establishes clear standards for the application of Presidential discretion in providing relief to injured industries and workers. If the ITC makes an affirmative determination on market disruption, there would be a presumption in favor of providing relief. That presumption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy clearly greater than the benefits of such action, or, in extraordinary cases, that such action would cause serious harm to the national security of the United States.

³⁴⁸ Section 421(k); 19 U.S.C. § 2451(k).

³⁴⁹ Section 421(k)(2); 19 U.S.C. § 2451(k)(2).

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concluding an agreement for China to take such action as necessary to prevent or remedy market disruption.³⁵⁰ The statute directs the U.S. Trade Representative to attempt to conclude such agreements within the 60-day consultation period provided for under the Protocol of Accession. This 60-day period begins not later than 5 days after the Commission makes an affirmative determination of market disruption.³⁵¹ If the United States and China are unable to reach agreement within the 60 day consultation period, the President is directed to provide import relief.³⁵² Any relief proclaimed by the President becomes effective 15 days thereafter.³⁵³

If necessary to continue to prevent or remedy market disruption, Section 421 permits the President to modify, reduce or terminate relief. In addition, the statute provides that, upon a request from the President or a petition on behalf of the domestic industry, the Commission shall investigate whether the safeguard action continues to be necessary to prevent or remedy market disruption.³⁵⁴ If the Commission's determination is affirmative, the President may extend the effective period of the relief action.^{355 356}

³⁵⁰ Section 421(j)(1); 19 U.S.C. § 2451(j)(1).

³⁵¹ Section 421(j)(1); 19 U.S.C. § 2451(j)(1).

³⁵² Section 421(j)(2); 19 U.S.C. § 2451(j)(2).

³⁵³ Section 421(m); 19 U.S.C. § 2451(m).

³⁵⁴ Section 421(o)(1); 19 U.S.C. § 2451(o)(1).

³⁵⁵ Section 421(o)(4); 19 U.S.C. § 2451(o)(4).

³⁵⁶ The statute also addresses trade diversion, which occurs when a third country safeguard measure applied by a WTO Member to Chinese goods causes or threatens to cause significant diversions of trade into the United States. Section 422(b)(1) of the Trade Act of 1974; 19 U.S.C. § 2451a(b)(1). If the ITC determines that a third country safeguard measure on Chinese goods causes or threatens to cause significant diversions of trade into the United States, the U.S. Trade Representative must request consultations with China and/or the third country Member imposing the measure. Section 422(e)(2); 19 U.S.C. § 2451a(e)(2). Should consultations fail to resolve the issue within 60 days, the President must determine, within 40 days after consultations end, what action to take to prevent or remedy the trade diversion or threat thereof. Section 422(g) & (h); 19 U.S.C. § 2451a(g) & (h). As with a Section 421 investigation, the timeline for a Section 422 trade diversion investigation is 150 days from petition to relief.

Product-Specific Safeguard: Legislative History

Having reviewed the substantive provisions of Section 421, it is illuminating to review the purpose of Section 421 as illustrated by the legislative history to the provision, as well as the underlying concerns of the United States and other countries with increasing imports from China that were the *raison d'être* of the product-specific safeguard.

In explaining Section 421, the report of the House Ways and Means Committee stated:

Section 3 created a new chapter of Title IV which implements the anti-surge mechanism established under the U.S.-China Bilateral Trade Agreement. This is intended to replace section 406 of the Trade Act of 1974, which would no longer apply to China as the result of section 1 of this Act.

The safeguard would permit the United States to provide relief to domestic industries and workers where products of Chinese origin are being imported in such increased quantities and under such conditions as to cause or threaten to cause market disruption to the domestic producers as a whole of like or directly competitive products.³⁵⁷

* * *

This is a temporary, extraordinary trade remedy specifically designed to address concerns about potential increased import competition from China in the future.³⁵⁸

As the House report noted, the import surge provision is temporary -- it will be in effect for 12 years -- and it is an "extraordinary" trade remedy. The primary definition of "extraordinary" according to the *New Shorter Oxford English Dictionary* is "Out of the usual or regular course or order; special."³⁵⁹ Section 421 fits squarely within this definition. That is, Section 421 is "extraordinary" in the sense that it is a "special" mechanism and "outside the usual

³⁵⁷ H.R. Rep. No. 632, 106th Cong., 2nd Sess. 16 (May 22, 2000).

³⁵⁸ *Id.* at 19.

³⁵⁹ *The New Shorter Oxford English Dictionary*, Clarendon Press, Oxford, 1993, Vol. 1 at 897.

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course" of a safeguard mechanism pursuant to Section 201, but not in the sense that a Section 421 action is intended to be "rare." Section 421 is special and outside the usual course because:

- it is a time-limited mechanism that will operate during a 12-year transition period as China accommodates its economic and trade regime to WTO requirements;
- it is directed at products from one country, China, in contrast to the global reach of a safeguard under Section 201; and
- the legal standard applied in an Section 421 import surge action is lower than that applied in a Section 201 action. Section 421 addresses imports causing "market disruption," a condition that exists where increased imports from China are a "significant cause of material injury." In contrast, in a Section 201 action, the legal threshold requires evidence that increased imports, from all sources, are a "substantial cause of serious injury."³⁶⁰

That Section 421 actions were intended to be applied vigorously is evident from consistent statements made by Clinton Administration officials who negotiated the US-China Bilateral Trade Agreement. For example, the White House's summary of the product-specific safeguard indicates that the provision was a "special" mechanism intended to supply "strong protection" against increased imports and that, because of lower injury standards, would likely result in more safeguard actions involving products from China, not fewer.

PRODUCT-SPECIFIC SAFEGUARD

The agreed provisions for the protocol package also ensure that American domestic firms and workers will have strong protection against rapid increases of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry. This mechanism, which is in addition to other WTO Safeguards provisions, differs from traditional safeguard measures. It permits United States to address imports solely from China, rather than from the whole world, that are a significant cause of material injury through measures such as import restrictions. Moreover, the

³⁶⁰ 19 U.S.C. § 2251.

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United States will be able to apply restraints unilaterally based on legal standards that differ from those in the WTO Safeguards Agreement. This could permit action in more cases. The Product-Specific Safeguard will remain in force for 12 years after China accedes to the WTO.³⁶¹

Ambassador Barshefsky emphasized to Congress that the import surge mechanism was special in that it was directed solely at Chinese imports, that it had a lower legal threshold compared to section 201, and that a product-specific safeguard remedy could be imposed if, for any reason, increased imports from China caused market disruption.

If, for any reason, Chinese imports into the U.S. surge, as for example, they did on steel last year as you well know, we will be able to take action and on a temporary basis, somewhere between two or three years, block or otherwise reduce the volume of those imports.³⁶²

Import Surge Protection -- China agrees to a twelve-year product-specific safeguard provision, which ensures that the U.S. can take effective action in case of increased imports from China which cause market disruption in the United States. This applies to all industries, permits us to act based on the lowest showing of injury, and act specifically against imports from China.³⁶³

MR. LEVIN. . . . I think one factor is if we see that there is a major surge in a particular product, the way I think the accession provision is written, that we do have some defense. . . . And the

³⁶¹ The White House, China Trade Relations Working Group, *Summary of U.S.-China Bilateral WTO Agreement*, Feb. 2, 2000 (emphasis added) (available at <http://usinfo.state.gov/regional/ea/uschina/bilatsum.htm>).

³⁶² *U.S.-China Bilateral Trade Agreement and the Accession of China to the World Trade Organization: Hearing Before the Committee on Ways and Means, House of Representatives*, 106th Cong., 2nd Sess. 63 (Feb. 16, 2000) (testimony of Charlene Barshefsky, US. Trade Representative), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:67129.pdf.

³⁶³ *U.S.-China Bilateral Trade Agreement and the Accession of China to the World Trade Organization: Hearing Before the Committee on Ways and Means, House of Representatives*, 106th Cong., 2nd Sess. 48 (Feb. 16, 2000) (statement of Charlene Barshefsky, US. Trade Representative), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:67129.pdf.

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reason we have anti-surge provisions is because trade flows both ways. Otherwise we wouldn't need them. * * *

AMBASSADOR BARSHEFSKY. Yes. If I might say with respect to surge, this is an area where again we are trying to look ahead. We wanted to be sure we had strong anti-import surge mechanisms for many of the reasons that Congressman Rangel has pointed out. That is to say China will become a much more forceful competitor in the future. We are already seeing that in steel last year, as you may know. And we want to be sure that we can take action—and under this provision we will be able to for 12 years after accession—to take action against import surges to the extent they are causing market disruption in the United States.

MR. LEVIN. Treating them, in other words, with a different standard than presently applies to—

AMBASSADOR BARSHEFSKY. This is a much different standard than under 201 now. One, because we can take action just against China. Two, because a market disruption standard is a very low legal threshold as you know. . . .³⁶⁴

MRS. JOHNSON. . . . I'd like you to describe, Ambassador Barshefsky, more specifically the benefits of the surge protection that you've negotiated. It is my understanding that NAFTA doesn't have this surge protection, that the old GATT agreements, the WTO, that we have never had the ability that this agreement is going to give us to just manage big changes in imports. * * *

AMBASSADOR BARSHEFSKY. You're quite right in pointing out that such a provision doesn't exist in any other agreement with respect to any other country. Nor does it exist in U.S. trade law.

This is a provision designed to ensure that if imports from China surge into the U.S. and cause market disruption in the U.S., we can for a period between two and three years, depending on the type of action, move to curb or restrict imports in that product sector.

³⁶⁴ U.S.-China Bilateral Trade Agreement and the Accession of China to the World Trade Organization: Hearing Before the Committee on Ways and Means, House of Representatives, 106th Cong., 2nd Sess. 67-68 (Feb. 16, 2000) (testimony of Charlene Barshefsky, US Trade Representative) (emphasis added), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:67129.pdf.

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MRS. JOHNSON. Now, this is similar to the way the voluntary restraint agreements worked—

AMBASSADOR BARSHEFSKY. It is, indeed.

MRS. JOHNSON. —in the 1980s, to allow the machine tool industry to get back on its feet.

AMBASSADOR BARSHEFSKY. Correct. It is quite similar in intent. It will be somewhat different procedurally in implementation. But it is quite similar in intent and in design.

MRS. JOHNSON. I would also like to point out that had we had this protection, the American bearing industry would be much stronger today than it is, because it would have had a more sensitive tool—

AMBASSADOR BARSHEFSKY. That's exactly right.

MRS. JOHNSON. —as opposed to the anti-dumping laws, to deal with the import of bearings from China.

AMBASSADOR BARSHEFSKY. And had this been in effect during the recent steel upsurge in the fourth quarter of 1997 and during 1998, including from China, our steel industry would have been much better positioned.³⁶⁵

Other Administration officials made similar statements to Congress about the purpose of the special import surge mechanism and that the provision, as a new additional protection against import surges from China, would likely result in more, not fewer, cases.³⁶⁶

³⁶⁵ *Accession of China to the WTO: Hearing Before the Committee on Ways and Means, House of Representatives*, 106th Cong., 2nd Sess. 61 (May 3, 2000) (testimony of Charlene Barshefsky, US. Trade Representative), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:67832.pdf.

³⁶⁶ *See Accession of China to the WTO: Hearing Before the Committee on Ways and Means, House of Representatives*, 106th Cong., 2nd Sess. (May 3, 2000) (available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:67832.pdf):

- At 26, Statement of Lawrence H. Summers, Secretary, U.S. Dept. of Treasury: "we will benefit from unprecedented special safeguards . . . to defend American workers and farmers from import surges A "China-specific" safeguard . . . provides stronger and more targeted relief than our current Section 201 law."

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The foregoing points were further emphasized in the course of congressional debate over H.R. 4444, which granted China permanent normal trade relations.

MR. LEVIN. . . . I want to focus right now on the challenges, because there are challenges as well as opportunities. . . . The second {challenge} relates to the potential surges in products from China. It is going to compete with us. That is what trade is. It is competition. And there could be harmful surges from China into the U.S. that would hurt our workers and hurt our producers.

I will not go into detail now, but I can say, as someone who has worked on these issues now for 15 years and fought to keep the antidumping provisions in U.S. law in the Uruguay Round, and successfully. . . this provision, this specific provision as to surges from China and handling them, is the strongest anti-surge provision that will be in U.S. law.³⁶⁷

MR. BENTSEN: This agreement also includes significant safeguards against unfair Chinese imports and failure by the Chinese to move toward market liberalization. Chinese imports will be subject to . . . tariffs for 12 years after entry into the WTO against import surges that threaten to disrupt United States markets. . . . In some cases, this language is tougher than current law. And I want to commend our colleagues, Mr. LEVIN and MR. BEREUTER for their work in putting these provisions into law and lessening the discretion in their implementation.³⁶⁸

MR. FITZGERALD: It bears emphasis that by granting PNTR, the United States gives up no trade protections. China

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- At 31-32, Statement of Dan Glickman, Secretary, U.S. Dept. of Agriculture: "The product-specific safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry. . . . This could permit action in more cases."
 - At 36, Statement of William M. Daley, Secretary, U.S. Dept. of Commerce: "The agreed provisions include special protections to guard against import surges from China. China has agreed to a 12-year product-specific safeguard provision which ensures that the United States can take effective action in case of increased exports from China which cause market disruption in the United States. This applies to all industries, permits us to act on a lower showing of injury to domestic industry than under existing safeguard law and allows us to act specifically against imports from China."

³⁶⁷ 146 Cong. Rec. H3957 (daily ed. May 23, 2000) (statement of Mr. Levin).

³⁶⁸ 146 Cong. Rec. H3606 (daily ed. May 23, 2000) (statement of Mr. Bentsen).

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already enjoys normal trade relations with the United States – our markets are already open to Chinese imports. The concessions that were made as a condition to Chinese entry to WTO were all made by the Chinese – the U.S. gave up nothing and PNTR will not affect a single American tariff or other trade barrier.³⁶⁹

MR. BAUCUS: The safeguard provision . . . is a very important feature of this bill. It ensures that if shifts in trade patterns following China's entry into the world trading system cause or threaten dislocations to American workers, businesses, and farmers, they will be able to obtain relief quickly.³⁷⁰

The Administration, in negotiating the product-specific safeguard mechanism in the US-China Bilateral Trade Agreement, was concerned about the effects of present and past import surges from China, and sought to provide strong protections to U.S. industries from anticipated future import surges. The expectation of future import surges was not a theoretical consideration, but an expectation based on past surges of Chinese imports. Indeed, a review of U.S. trade statistics for imports from China during the period 1996-2000 (the period during which the US-China Bilateral Trade Agreement was negotiated) demonstrates numerous significant increases of imports from China on a yearly basis. As an illustration, the following table shows product sectors (identified by SITC code) that experienced a greater-than-50% increase in imports (by value) between 1999 and 2000.

³⁶⁹ 146 Cong. Rec. S8614 (daily ed. September 15, 2000) (statement of Mr. Fitzgerald).

³⁷⁰ 146 Cong. Rec. S8633 (daily ed. September 15, 2000) (statement of Mr. Baucus).

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**SELECTED U.S. IMPORTS FROM CHINA -- 1996-2000
(BY INDUSTRIAL GROUPING)**

U.S. Imports from China							
1996-2000 BY INDUSTRIAL GROUPING (SITC - 3 DIGIT)							
Product	SITC CODE	1996 (\$000)	1997 (\$000)	1998 (\$000)	1999 (\$000)	2000 (\$000)	% Change 1999-2000
-- Live Animals Other Than Fish, Seafood	00	4,328	1,603	1,703	2,849	5,126	79.9%
* Meat, Dried, Salted, or Smoked	012	1,208	1,768	1,335	2,356	3,695	56.8%
* Crustaceans, Molluscs	036	128,145	154,446	127,533	133,853	230,548	72.2%
* Other Cereals	045	56	107	71	75	193	157.3%
* Cereal Meals & Flours	047	226	192	7	46	205	345.7%
* Fruit & Vegetable Juice	059	8,285	26,128	30,083	24,412	39,507	61.8%
* Sugar Confectionary	062	7,174	10,705	11,899	16,503	25,946	57.2%
* Chocolate	073	58	34	157	87	267	206.9%
-- Animal Feed (not including unmilled cereals)	08	4,755	12,056	8,417	9,222	21,112	128.9%
* Nonalcoholic Beverages	111	1,589	1,799	1,952	1,669	3,985	138.8%
-- Tobacco & Tobacco Products	12	6,666	9,427	11,712	11,634	19,558	68.1%
* Unmanufactured	121	6,494	9,192	11,381	10,661	17,635	65.4%
* Manufactured	122	172	235	331	973	1,924	97.7%
* Raw Furskins	212	43	15	23	9	52	477.8%
* Oil Seeds & Fruit (incl. Flours & Meals)	223	758	694	245	679	1,103	62.4%
* Wood in Chips or particles	246	72	107	160	120	191	59.2%
* Textile Fibers, not Spun	264	1,117	15	4	3	14	366.7%
* Vegetable Textile Fibers, but not spun	265	35	39	9	94	153	62.8%
* Manmade Fibers for spinning	267	3	0	0	2	229	11350.0%
* Fertilizer, Crude (excp't division 56)	272	0	9	104	67	127	89.6%
* Stone, Sand & Gravel	273	1,254	1,035	1,072	3,215	8,956	178.6%
* Base Metals, Ores & Concentrates	287	3,684	6,221	4,439	2,385	7,965	234.0%
* Nonferrous Base Metal Waste & Scrap	288	895	1,033	923	2,338	4,012	71.6%
* Precious Metals, waste and scraps	289	78	1,805	82	73	1,655	2167.1%
Mineral Fuels, Lubricants & Related Materials	3	462,465	390,659	360,998	237,729	615,373	158.9%
-- Coal, Coke & Briquettes	32	94,525	89,532	114,453	66,712	114,041	70.9%
* Coke & Semicoke of Coal	325	94,525	89,282	114,190	65,638	112,599	71.5%
-- Petroleum Products & Related Materials	33	348,963	266,663	214,390	162,035	482,528	197.8%
* Petroleum Oils, Crude	333	226,970	109,204	60,382	10,655	105,605	891.1%
* Petroleum Oils	334	94,587	81,725	70,283	84,812	267,945	215.9%
* Residual Petroleum Products	335	27,406	75,914	83,725	66,568	108,977	63.7%
-- Gas, Natural & Manufactured	34	18,976	34,464	32,155	8,981	18,804	109.4%
* Liquefied Propane and Butane	342	3,245	6,377	10,598	4,736	8,298	75.2%
* Petroleum Gases	344	15,731	28,088	21,557	4,245	10,506	147.5%
-- Animal Oils & Fats	41	7	26	30	10	145	1350.0%
* Fixed Vegetable Fats & Oils	421	3,107	1,720	677	811	2,212	172.7%
* Soap, Cleansing & Polishing Preparations	554	6,606	5,920	6,007	7,433	12,635	70.0%
-- Fertilizers (incl. group 272)	56	850	537	861	645	4,809	645.6%
* Polymers of Styrene, in Primary Forms	572	224	81	417	229	1,159	406.1%
* Monofilament	583	135	575	175	969	1,644	69.7%
* Leather	611	1,912	1,745	2,358	585	2,596	343.8%
* Furskins, Tanned or Dressed	613	1,119	2,511	905	793	1,618	104.0%
* Cork Manufactures	633	555	858	579	1,125	1,933	71.8%
* Paper & Paperboard	641	4,426	5,878	5,022	7,134	12,961	81.7%
* Woven Manmade Fabrics	653	32,727	77,102	69,751	50,585	84,938	67.9%
-- Iron and Steel	67	291,744	314,659	398,424	349,843	623,265	78.2%

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U.S. Imports from China							
1996-2000 BY INDUSTRIAL GROUPING (SITC - 3 DIGIT)							
Product	SITC CODE	1996 (\$000)	1997 (\$000)	1998 (\$000)	1999 (\$000)	2000 (\$000)	% Change 1999-2000
* Semifinished Iron & Steel Products	672	1,051	1,360	4,203	6,850	31,770	363.8%
* Non-alloy, Non-coated Steel Flat Products	673	110,637	100,666	117,926	115,476	181,044	56.8%
* Alloy Steel Flat Products	675	209	180	856	1,449	7,364	408.2%
* Steel Bars, Rods, Angles, Shapes & Sections	676	14,020	12,355	12,895	16,372	68,385	317.7%
* Steel Rails and Railway Products	677	288	705	1,895	1,789	3,025	69.1%
* Steel Pipe & Tube, Fittings	679	82,659	105,237	151,245	126,479	228,020	80.3%
* Metal Structures	691	7,026	9,191	13,991	34,704	54,916	58.2%
* Steam/Vapor Generating Boilers	711	1,565	1,708	368	3,798	12,938	240.7%
* Other Nonelectric Engines & Motors	714	49,019	15,385	25,129	32,176	50,360	56.5%
* Agricultural (excl. tractors)	721	13,343	13,993	15,906	19,469	29,702	52.6%
* Tractors	722	6,526	5,427	3,495	3,144	6,321	101.0%
* Food Processing Machines	727	1,712	1,625	1,951	2,978	6,953	133.5%
* Metal Working Machines used solely w/ metal machines	735	16,079	14,045	15,209	19,577	30,441	55.5%
* Automatic Data Processing Machines	752	1,407,603	2,044,187	2,783,390	4,105,935	6,299,714	53.4%
* Medical & Dental Electric Diagnostic Equip	774	19,065	22,421	16,041	27,159	47,827	76.1%
-- Road Vehicles	78	417,344	574,361	731,255	923,424	1,800,180	94.9%
* Trailers & Semi-Trailers	786	44,416	53,813	81,942	91,232	624,229	584.2%
* Prefabricated Buildings	811	17	1,297	1,060	1,223	3,961	223.9%
* Sanitary, Plumbing & Heating Fixtures	812	846	3,265	8,650	15,952	24,979	56.6%
* Meters & Counters	873	5,991	4,716	6,668	7,890	14,177	79.7%
* Photography & Cinematographic Supplies	882	7,821	13,057	9,904	9,779	29,962	206.4%
* Printed Matter	892	110,056	134,510	184,413	254,389	384,354	51.1%

Source: U.S. Department of Commerce, International Trade Administration, *Monitoring of Imports from the PRC*, <http://ia.ita.doc.gov/monitor/china/china-monitor-3-digit.htm>.

Import surges of products from China were not a concern of the United States alone. As noted, the Transitional Product-Specific Safeguard Mechanism was a WTO protocol commitment of China and, as such, the mechanism is available for use by other WTO Members. China export statistics indicate that countries other than the United States have experienced significant increases in imports from China. For instance, statistics published by the WTO show significant yearly increases in China's exports to the European Union and Japan occurred in the period before China's WTO accession.

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EU AND JAPANESE IMPORTS FROM CHINA: 1990-00, 1998, 1999 AND 2000

	Annual Percentage Change in Total Merchandise Imports from China			
	1990-00	1998	1999	2000
EU	16%	12%	13%	22%
Japan	16%	-11%	16%	29%

Source: WTO, *International Trade Statistics, 2001*, at 90 (Table III.76).

In addition, WTO statistics demonstrate that, over the pre-accession period of 1995-2001, WTO Members initiated more antidumping investigations and imposed more antidumping measures against imports from China than against any other country. Thus, it is evident that many other countries, not only the United States, had experienced increased, injurious imports from China in the period prior to China's WTO accession. Statistics show that, over the 1995-2001 period, antidumping measures imposed on imports from China were more than double the number of measures imposed on Korea, the next most affected country.

Antidumping Initiations: Top Ten Affected Countries -- 01/01/95 to 31/12/01

Affected Country	1995	1996	1997	1998	1999	2000	2001	Totals:
Brazil	8	10	5	6	13	9	12	63
China, P.R.	20	43	33	28	41	43	47	255
Chinese Taipei	4	9	16	10	22	16	19	96
Germany	7	9	13	8	13	4	9	63
India	3	11	8	12	13	10	12	69
Indonesia	7	7	9	5	20	13	13	74
Japan	5	6	12	13	22	9	12	79
Korea, Rep. of	14	11	15	24	34	21	19	138
Thailand	8	9	5	2	19	12	16	71
United States	12	21	15	15	14	12	13	102
Totals for 01/01/95 - 31/12/01	157	224	243	254	356	281	330	1845

Source: WTO website, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm. Only 33 of the 255 initiations against China concerned U.S. actions.

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Antidumping Measures: Top Ten Affected Countries -- 01/01/95 to 31/12/01

Affected Country	1995	1996	1997	1998	1999	2000	2001	Totals:
Brazil	9	10	6	5	5	8	2	45
China, P.R.	26	15	33	24	20	30	30	178
Chinese Taipei	2	2	6	11	7	18	9	55
India	4	1	5	6	9	7	6	38
Japan	5	6	5	7	10	19	8	60
Korea, Rep. of	4	5	3	12	13	21	12	70
Russia	8	2	9	4	15	9	6	53
Thailand	5	7	2	5	1	13	7	40
Ukraine	5	0	3	5	7	7	6	33
United States	8	4	9	11	8	13	4	57
Totals for 01/01/95 - 31/12/01	118	84	124	162	181	234	163	1066

Source: WTO website, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm. Only 29 of the 178 measures against China were imposed by the United States.

3. Efforts by U.S. industries to use the provisions

(a) Textile safeguards

The special textile safeguard set out in the Working Party Report to China's WTO accession became effective upon China's entry into the WTO on December 11, 2001. As noted above, CITA did not issue procedural rules implementing the special textile safeguard in U.S. law until May 2003. However, even before CITA's issued its procedural rules, U.S. textile groups attempted to employ the special textile safeguard.

In September 2002, pursuant to the specific textile safeguard mechanism established in the Working Party Report (at paragraph 242), the American Textile Manufacturers Institute (ATMI) petitioned CITA to impose special textile quotas on five product categories: (1) knit

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fabric; (2) gloves; (3) dressing gowns; (4) brassieres; and (5) textile luggage.³⁷¹ In addition, ATMI identified a sixth product, textured filament yarn from China, and asked CITA to prepare a case for the possible imposition of quota restraints on imports of that product in the event that imports continued to increase.³⁷²

In making its request, ATMI cited a 119% increase in textile imports from China in the first six months of 2002 and stated that imports of Chinese textile products were "experiencing their greatest surge in history."³⁷³

During the first six months of the year, Chinese exports of textile and apparel products to the United States increased by almost 900 million square meters, with the textile portion increasing by more than 700 million square meters. On the strength of this increase, China surpassed both Pakistan and Canada to become the second largest textile and apparel exporter to the United States, shipping 1.9 billion square meters during the first six months of the year. China accounted for 60 percent of the increase in world-wide imports of textile and apparel products during the first half of the year.³⁷⁴

ATMI also presented the following data with respect to the product categories identified in its petition.

- 1) Knit fabric – Chinese knit fabric exports rose 22 thousand percent and the average price of Chinese knit fabric dropped by 60 percent, catapulting China from being the 26th largest supplier of such exports to the U.S. to the 5th place among all foreign suppliers;

³⁷¹ ATMI press release, *ATMI Calls for New Quotas on Surging Chinese Imports*, September 5, 2002 (available at <http://www.atmi.org/NewsRoom/releases/pr200302.asp>).

³⁷² ATMI press release, *ATMI Calls for New Quotas on Surging Chinese Imports*, September 5, 2002 (available at <http://www.atmi.org/NewsRoom/releases/pr200302.asp>).

³⁷³ ATMI press release, *ATMI Calls for New Quotas on Surging Chinese Imports*, September 5, 2002 (available at <http://www.atmi.org/NewsRoom/releases/pr200302.asp>).

³⁷⁴ ATMI press release, *ATMI Calls for New Quotas on Surging Chinese Imports*, September 5, 2002 (available at <http://www.atmi.org/NewsRoom/releases/pr200302.asp>).

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- 2) Gloves – China's exports of gloves to the United States tripled over the last six months, with the result that Chinese exports are now twice as large as those from the next largest supplier;
- 3) Nightwear/Dressing Gowns – Chinese exports of nightwear more than quadrupled, vaulting China from seventh to first place among supplying countries. The Chinese surge was accompanied by a 47% drop in Chinese prices;
- 4) Brassieres – In less than six months, China leapfrogged the top two long-standing largest suppliers – Mexico and the Dominican Republic – as China's price per dozen dropped to \$29, by far the lowest of any major supplier;
- 5) Luggage – Chinese exports of textile luggage have quadrupled to 71 million kilograms while imports from every other supplier have simultaneously dropped, some by as much as 60 percent. Chinese prices fell by 62% during the same period of time. China now ships more than five times as much as the next largest supplier;
- 6) Textured filament yarn – Chinese exports have only recently begun to surge and remain relatively small. However, over the past two months, Chinese exports increased at a rate of 400,000 kilograms a month.³⁷⁵

At the time the petitions were filed, importers questioned whether ATMI was eligible to request textile safeguards with respect to certain of the products identified because ATMI members do not make four of the five products for which ATMI petitioned for relief (*i.e.*, dressing gowns, brassieres, gloves, and textile luggage).³⁷⁶ However, ATMI members do produce and supply the fabric used in making these products. A press article noted at the time that:

³⁷⁵ ATMI press release, *ATMI Calls for New Quotas on Surging Chinese Imports*, September 5, 2002 (available at <http://www.atmi.org/NewsRoom/releases/pr200302.asp>).

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For CITA to impose a safeguard, it would have to apply an expansive definition of market disruption that would cover upstream suppliers of a given product, an ATMI source said. Under this definition, quotas could be imposed on a given product if it disrupted U.S. exports of fabric used to make these items, he said. This would be consistent with the market disruption definition CITA has applied in the past to invoke quotas under the Multifiber Arrangement (MFA), he said.

* * *

A Commerce Dept. official said this week that given this first request, CITA is looking at both the specific categories as well as the whole process for evaluating the request. This includes questions of whether upstream suppliers can claim market disruption or whether petitioners have to meet a standing requirement, he said. He said that CITA would "at some point" decide how to proceed on the request.³⁷⁷

Prior to CITA's issuance of procedural rules applicable to special textile safeguard requests in May 2003, CITA took no official action with respect to ATMI's September 2002 petitions.³⁷⁸ When CITA issued its procedural rules, however, it resolved the question about ATMI's standing by determining that, in accord with past CITA practice, domestic producers of components used in producing like or directly competitive products were eligible to request safeguards:

Consistent with longstanding Committee practice in considering textile safeguard actions, requests may be filed by an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) a domestic producer or producers of a product that is a like or directly

³⁷⁶ *ATMI Seeks Relief Under China-Specific Safeguard on Five Import Categories*, INSIDE US-CHINA TRADE, September 11, 2002.

³⁷⁷ *ATMI Seeks Relief Under China-Specific Safeguard on Five Import Categories*, INSIDE US-CHINA TRADE, September 11, 2002.

³⁷⁸ A press report noted: "The [ATMI's] petition has so far been held in abeyance because there are no rules governing the process of receiving and deciding on petitions under the safeguards." *China Seeks Meeting to Convince ATMI to Drop Safeguard Petition*, INSIDE US-CHINA TRADE, May 7, 2003.

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competitive with the subject Chinese textile or apparel product; or
(B) a domestic producer or producers of a component used in the production of a product that is like or directly competitive with the subject Chinese textile or apparel product.³⁷⁹

Once the new procedural rules were issued, it was determined that ATMI (the only petitioner for a China-specific textile safeguard so far) would need to re-file the petitions it had initially filed in September 2002.

. . . Commerce has indicated that it will have to re-file a petition on Chinese safeguards now that the regulations outlining the process have been published One source said that while some officials have said a new petition is not needed, ATMI will need to include new information, which means it will effectively have to file a new document with CITA before the process begins.³⁸⁰

On July 24, 2003, ATMI, together with certain other textile groups, filed petitions requesting that a textile and apparel safeguard action be taken against China with respect to four product categories. In August 2003, CITA accepted three of the petitions filed by ATMI (knit fabric, dressing gowns, and brassieres) and rejected the fourth (gloves). The following summarizes the petitioners, product categories, and status of and the four petitions:

Petitioners	Product	Category	Status
<ul style="list-style-type: none"> • American Yarn Spinners Association • American Manufacturing Trade Action Coalition • American Textile Manufacturers Institute • National Textile Association 	Knit fabric	222	Accepted by CITA
<ul style="list-style-type: none"> • American Manufacturing Trade Action Coalition • American Textile Manufacturers Institute • National Textile Association 	Cotton and man-made fiber dressing gowns	350/650	Accepted by CITA

³⁷⁹ See *Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China*, 68 Fed. Reg. at 27788.

³⁸⁰ *ATMI May File Limited Petition In Light Of New China Textile Safeguard*, INSIDE US-CHINA TRADE, May 29, 2003.

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Petitioners	Product	Category	Status
<ul style="list-style-type: none"> • American Manufacturing Trade Action Coalition • American Textile Manufacturers Institute • National Textile Association 	Cotton and man-made fiber brassieres	349/649	Accepted by CITA
<ul style="list-style-type: none"> • American Manufacturing Trade Action Coalition • American Textile Manufacturers Institute • National Textile Association 	Cotton and man-made fiber gloves	331/631	Rejected by CITA

On August 18, 2003, CIT published a notice in the *Federal Register* soliciting public comments on the three safeguard requests that it had accepted.³⁸¹ The petitions on these three product categories showed substantial increases in imports of various textile and apparel products from China. For example, the petition on certain knit fabrics showed an increase in imports from a little over 31,000 kilograms in 2001 to more than 7 million kilograms in 2002, accompanied by price declines of more than 50 percent.³⁸² The petitions on the other products also showed increases in imports from China of 300 to more than 500% and price declines of 44-50 percent between 2001 and 2002.³⁸³

The public comment period for the three textile petitions ended on September 17, 2003. On December 23, 2003, CITA determined that Chinese-origin knit fabric, dressing gowns, and brassieres are, due to market disruption (and the threat thereof), threatening to impede the orderly development of trade in such products, and that imports of such products from China play a

³⁸¹ See *Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China*, 68 Fed. Reg. 49440 (knit fabric; category 222) (CITA, August 18, 2003); *Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China*, 68 Fed. Reg. 49444 (dressing gowns; category 350/650) (CITA, August 18, 2003); *Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China*, 68 Fed. Reg. 49448 (brassieres; category 349/649) (CITA, August 18, 2003).

³⁸² See *Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China*, 68 Fed. Reg. at 49444.

³⁸³ See *Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China*, 68 Fed. Reg. at 49448 and 49452.

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significant role in the existence (and threat) of market disruption. Pursuant to these findings, on December 29, 2003, CITA issued notices in the *Federal Register* announcing that it had (1) established import limits for knit fabric, dressing gowns, and brassieres, and (2) requested consultations with China.³⁸⁴ The import limits established by CITA on these textile products from China became effective on December 24, 2003 and will extend through December 23, 2004.³⁸⁵

(b) Import surges and Section 421 of the Trade Act of 1974 as amended

To date, five investigations have been initiated under Section 421 covering the following imported products from China: (1) pedestal actuators, (2) steel wire garment hangers, (3) brake drums and rotors, (4) ductile iron waterworks fittings (DIWF), and (5) innersprings. All five have been completed. In the first (pedestal actuators), second (wire hangers), and fourth (DIWF) cases, the International Trade Commission made an affirmative determination of injury, finding in each case that the Chinese products were being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.³⁸⁶ In those three cases, the ITC recommended

³⁸⁴ See *Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Knit Fabric, Category 222, Produced or Manufactured in the People's Republic of China*, 68 Fed. Reg. 74944 (CITA, December 29, 2003); *Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Brassieres and Other Body Supporting Garments, Category 349/649, Produced or Manufactured in the People's Republic of China*, 68 Fed. Reg. 74945 (CITA, December 29, 2003); *Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Cotton and Man-Made Fiber Dressing Gowns and Robes, Category 350/650, Produced or Manufactured in the People's Republic of China*, 68 Fed. Reg. 74947 (CITA, December 29, 2003).

³⁸⁵ *Id.*

³⁸⁶ In the third Section 421 case, the ITC made a negative determination of injury. See *Certain Brake Drums and Rotors from China*, 68 Fed. Reg. 48938 (Determination) (ITC August 15, 2003).

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that the President grant relief to the domestic industry. However, no domestic industry has been granted relief under Section 421. In each of these three affirmative cases (pedestal actuators; wire hangers; DIWF), the President denied relief.

China has lobbied hard in the United States to discourage the President from granting relief to domestic industries under Section 421. For example, 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. China's Vice-Minister for Trade, Long Yongtu, came to Washington and met with Commerce Department officials in December 2002, arguing that the use of Section 421 would undermine China's market access to the United States. The Commerce Department's General Counsel, Theodore Kassinger, told Minister Yongtu that President Bush would take account of China's concerns in deciding on a remedy.³⁸⁷ In addition, a press report indicated that some administration officials believed imposition of a safeguard measure on Chinese imports could have negative political consequences in that "a decision to impose the ITC remedy could lead to increased use of the China-specific safeguard, which could further complicate the bilateral trade relationship."³⁸⁸

After the President denied relief in the second Section 421 case concerning steel wire garment hangers, an observer commented that one possible view of the President's action was that it was "an overtly political decision by the President made under pressure from the Chinese government and a signal that this administration has no intention of ever granting relief under

³⁸⁷ See *Chinese Official Complains about China-Specific Safeguards*, CHINATRADEEXTRA.COM, posted December 6, 2002.

³⁸⁸ See *U.S. Holds Door Open to Settlement in First China-Specific Safeguard Case*, INSIDE US-CHINA TRADE, November 13, 2002.

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Section 421."³⁸⁹ The result has been that the first two cases under Section 421 were denied relief by the President, even though the purpose of the statute and Congressional intent were that relief would be reasonably available.

The following tables summarize the five Section 421 actions that have been initiated to date.

TA-421-01: PEDESTAL ACTUATORS FROM CHINA
<p><u>Petition Filed:</u> August 19, 2002, on behalf of Motion Systems Corp., Eatontown, NJ.</p> <p><u>Investigation Instituted:</u> effective August 19, 2002; <i>Pedestal Actuators from China</i>, 67 Fed. Reg. 54822 (Institution) (ITC August 26, 2002).</p> <p><u>ITC Injury Determination:</u> Affirmative. On October 18, 2002, by a vote of 3-2, the USITC determined that pedestal actuators from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. See <i>Pedestal Actuators from China</i>, 67 Fed. Reg. 69557 (Determination) (ITC November 18, 2002).</p> <p><u>ITC Remedy Recommendation:</u> October 29, 2002. The Commission recommended import relief in the form of a quota.</p> <ul style="list-style-type: none">• Commissioners Hillman and Miller recommended a quantitative import restriction for 3 years in the amount of 5,626 units in year 1; 6,470 units in year 2; and 7,440 units in year 3.• Commissioner Koplan recommended a quantitative import restriction for 3 years in the amount of 4,425 units in year 1; 4,514 units in year 2; and 4,604 units in year 3. <p>The Commission transmitted its remedy proposals to the President and U.S. Trade Representative on November 7, 2002. See <i>Pedestal Actuators from China</i>, 67 Fed. Reg. 69557 (Determination) (ITC November 18, 2002).</p> <p><u>Views of Commission:</u> <i>Pedestal Actuators from China</i>, TA-421-1, USITC Pub. 3557 (November 2002).</p> <p><u>President's Decision:</u> On January 17, 2003, the President announced that he was not providing relief because he had determined that import relief was not in the national economic interest and that import relief would have an adverse impact on the United States economy clearly greater than the benefits of such action. The President provided the following reasons for his decision not to grant relief:</p> <p style="padding-left: 40px;">In determining not to provide import relief, I considered its overall costs to the U.S. economy. The facts of this case indicate that imposing the USITC's recommended quota would not likely benefit the domestic producing industry and instead would cause imports to shift from China to other offshore sources.</p>

³⁸⁹ See Eliza Patterson, *The U.S. President, Once Again, Rejects Import Sanctions Against China*, ASIL Insights (May 2003) (available at the website of the American Society of International Law: www.asil.org/insights/insigh106.htm).

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Even if the quota were to benefit the primary domestic producer, the cost of the quota to consumers, both the downstream purchasing industry and users of the downstream products, would substantially outweigh any benefit to producers' income. The USITC's analysis confirms this conclusion.

In addition, downstream industries are already under pressure to migrate production offshore to compete with lower-cost imports of finished products. Higher component costs resulting from import relief would add to this pressure. Given the significantly larger number of workers in the downstream purchasing industry when compared with the domestic pedestal actuator industry, I find that imposing import restrictions would do more economic harm than good.

Finally, a quota would negatively affect the many disabled and elderly purchasers of mobility scooters and electric wheelchairs, the primary ultimate consumers of pedestal actuators.

Memorandum of January 17, 2003--Presidential Determination on Pedestal Actuator Imports From the People's Republic of China, 68 Fed. Reg. 3155 (Presidential Document January 22, 2003).

TA-421-02: STEEL WIRE GARMENT HANGERS FROM CHINA

Petition Filed: November 27, 2002, on behalf of CHC Industries, Inc., Palm Harbor, FL; M&B Hangers Co., Leeds, AL; and United Wire Hanger Corp., South Hackensack, NJ.

Investigation Instituted: effective November 27, 2002; *Certain Steel Wire Garment Hangers from China*, 67 Fed. Reg. 72700 (Institution) (ITC December 6, 2002).

ITC Injury Determination: Affirmative. On January 27, 2003, by a vote of 5-0, the USITC determined that certain steel wire garment hangers from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. See *Certain Steel Wire Garment Hangers from China*, 68 Fed. Reg. 8926 (Determination) (ITC February 26, 2003).

ITC Remedy Recommendation: February 5, 2003. The Commission recommended import relief in the form of an additional duty.

- Commissioners Okun, Hillman, and Miller recommended relief in the form of an additional duty for 3 years: 25% year 1; 20% in year 2; and 15% in year 3. In addition, they recommended expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.
- Commissioner Bragg recommended relief in the form of an additional duty for 2 years: 20% year 1; 15% in year 2.
- Commissioner Koplan recommended relief in the form of an additional duty of 30% for 3 years. In addition, he recommended expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports. See *Certain Steel Wire Garment Hangers from China*, 68 Fed. Reg. 8926 (Determination) (ITC February 26, 2003).

The Commission transmitted its remedy proposals to the President and U.S. Trade Representative on February 14, 2003. See *Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Certain Steel Wire Garment Hangers From the People's Republic of China*, 68 Fed. Reg. 10765 (USTR March 6, 2003).

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TA-421-02: STEEL WIRE GARMENT HANGERS FROM CHINA

Views of Commission: *Certain Steel Wire Garment Hangers from China*, TA-421-2, USITC Pub. 3575 (February 2003).

President's Decision: On April 25, 2003, the President announced that he was not providing relief because he had determined that import relief was not in the national economic interest and that import relief would have an adverse impact on the United States economy clearly greater than the benefits of such action. The President provided the following reasons for his decision not to grant relief:

The facts of this case indicate that imposing additional tariffs on Chinese imports would affect domestic producers unevenly, favoring one business strategy over another. While most of the producers would likely realize some income benefits, additional tariffs would disrupt the long-term adjustment strategy of one major producer, which is based in part on distribution of imported hangers, and cause that producer to incur substantial costs.

In addition, most domestic producers, including the petitioners, have begun to pursue adjustment strategies. While these strategies have included consolidation, modernization of production facilities, and expansion into complementary products and services, domestic producers are also expanding their use of imports. Indeed, a substantial part of the surge in imports during the most recent period measured was brought in by domestic producers themselves, including the petitioners.

Moreover, after 6 years of competing with Chinese imports, domestic producers still account for over 85 percent of the U.S. wire hanger market. With this dominant share of the market, domestic producers have the opportunity to adjust to competition from Chinese imports even without import relief.

Furthermore, there is a strong possibility that if additional tariffs on Chinese wire hangers were imposed, production would simply shift to third countries, which could not be subject to section 421's China-specific restrictions. In that event, import relief would have little or no benefit for any domestic producer.

Additional tariffs would have an uneven impact on domestic distributors of wire hangers. For some distributors, the tariffs would likely lead to some income benefits. However, the tariffs would likely harm other distributors in light of their business models.

Additional tariffs would also likely have a negative effect on the thousands of small, family-owned dry-cleaning businesses across the United States that would either have to absorb the resulting increased costs or pass them on to their customers.

Memorandum of April 25, 2003--Presidential Determination on Wire Hanger Imports from the People's Republic of China, 68 Fed. Reg. 23017 (Presidential Document April 29, 2003).

TA-421-03: BRAKE DRUMS AND ROTORS FROM CHINA

Petition Filed: June 6, 2003, on behalf of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (consisting of Dana Corp. (Brake and Chassis Division)/Brake Parts, Inc.; Federal Mogul Corp.; and Thyssen Krupp Waupaca/Waupaca Foundry, Inc.).

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TA-421-03: BRAKE DRUMS AND ROTORS FROM CHINA

Investigation Instituted: effective June 6, 2003; *Certain Brake Drums and Rotors from China*, 68 Fed. Reg. 35702 (Institution) (ITC June 16, 2003).

ITC Injury Determination: Negative. On December 4, 2003, by a vote of 5-0, the USITC determined that certain brake drums and rotors from the People's Republic of China are not being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. See *Certain Brake Drums and Rotors from China*, 68 Fed. Reg. 48938 (Determination) (ITC August 15, 2003).

ITC Remedy Recommendation: None.

Views of Commission: *Certain Brake Drums and Rotors from China*, TA-421-3, USITC Pub. 3622 (August 2003).

President's Decision: None.

TA-421-04: DUCTILE IRON WATERWORKS FITTINGS FROM CHINA

Petition Filed: September 5, 2003, on behalf of McWane, Inc., Birmingham, AL, and three subsidiaries: Clow Water Systems Co., Coshocton, OH, Tyler Pipe Co., Tyler, TX, and Union Foundry Co., Anniston, AL.

Investigation Instituted: effective September 5, 2003; *Certain Ductile Iron Waterworks Fittings from China*, 68 Fed. Reg. 54010 (Institution) (ITC September 15, 2003).

ITC Injury Determination: December 4, 2003. By a vote of 6-0, the USITC determined that certain ductile iron waterworks fittings from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. See *Certain Ductile Iron Waterworks Fittings from China*, 68 Fed. Reg. 69421 (Determination) (ITC December 12, 2003).

ITC Remedy Recommendation: December 15, 2003. The Commission recommended import relief in the form of a tariff-rate quota for a three-year period:

- 50% tariff on imports exceeding 14,324 short tons in year 1;
- 40% tariff on imports exceeding 15,398 short tons in year 2; and
- 30% tariff on imports exceeding 16,553 short tons in year 3.

The Commission further recommended expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

The Commission transmitted a report on its determination, as well as its remedy proposals, to USTR on December 24, 2003.

Views of Commission: *Certain Ductile Iron Waterworks Fittings from China*, TA-421-4, USITC Pub. 3657 (December 2003).

President's Decision: On March 3, 2004, the President announced that he was not providing relief because he had determined that import relief was not in the national economic interest and that import relief would have an

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adverse impact on the United States economy clearly greater than the benefits of such action. The President provided the following reasons for his decision not to grant relief:

The facts of this case indicate that imposing the USITC's recommended tariff-rate quota remedy or any other import relief available under section 421 would be ineffective because imports from third countries would likely replace curtailed Chinese imports. The switch to third country imports could occur quickly because the major U.S. importers already import substantial quantities from countries such as India, Brazil, Korea, and Mexico. Because importers' existing inventories of imports will likely cover demand for approximately 6 to 12 months from the imposition of import relief, a switch from China to alternative import sources would not likely lead to significant additional demand for domestically produced pipe fittings, even accounting for a time lag in making that switch. Under these circumstances, import relief would provide no meaningful benefit to domestic producers.

In addition, import relief would cost U.S. consumers substantially more than the increased income that could be realized by domestic producers. Indeed, the USITC estimated that its recommended remedy would generate a negative net domestic welfare effect of between \$2.3 million and \$3.7 million in the first year alone.

While not necessary in reaching my determination that imposing import relief would have an adverse impact on the United States economy clearly greater than the benefits, it is also worth noting two additional points:

- First, evidence suggests that domestic producers enjoy a strong competitive position in the U.S. market, and in fact the largest domestic producer recently announced price increases nationwide ranging from 8 to 35 percent. The two smaller domestic producers and the major U.S. importers have publicly indicated that they would follow these price increases.
- Second, in 2002 and 2003, imports of this product have been relatively stable in volume terms and have shown a slight decline in value terms.

The circumstances of this case make clear that the U.S. national economic interest would not be served by the imposition of import relief under section 421. I remain fully committed to exercising the important authority granted to me under section 421 when the circumstances of a particular case warrant it.

Memorandum of March 3, 2004--Presidential Determination on Imports of Certain Ductile Iron Waterworks Fittings From the People's Republic of China, 69 Fed. Reg. 10597 (Presidential Document March 8, 2004).

TA-421-05: INNERSPRINGS FROM CHINA

Petition Filed: January 6, 2004, on behalf of the U.S. member companies of The American Innerspring Manufacturers (AIM), Memphis, TN. Petitioning firms include Atlas Spring, Gardena, CA; Hickory Springs Manufacturing Co., Hickory, NC; Leggett & Platt, Carthage, MO; and Joseph Saval Spring & Wire Co., Inc., Taylor, MI.

Investigation Instituted: effective January 6, 2004; *Innersprings from China*, 69 Fed. Reg. 2002 (Institution) (ITC January 13, 2004).

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TA-421-05: INNERSPRINGS FROM CHINA

ITC Injury Determination: Negative. On March 8, 2004, by a vote of 6-0, the USITC determined that uncovered innerspring units from the People's Republic of China are not being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. See ITC News Release 04-022: ITC Announces Determination in China Safeguard Investigation Concerning Uncovered Innerspring Units from China (March 8, 2004).

ITC Remedy Recommendation: None.

Views of Commission: To be submitted by March 26, 2004.

President's Decision: None.

The President's failure to grant relief in any of the Section 421 cases in which the ITC has recommended relief has been criticized as not respecting congressional intent and an abuse of presidential discretion. Representative Sander Levin (Dem.-MI), for example, issued the following comments after the President denied relief to domestic producers of DIWF on March 3, 2004:

The President's determination flies in the face of the ITC's clear decisions and, in so doing, demonstrates a disturbing approach to the safeguard law and U.S. fair trade laws. The President once again gives short shrift to the harm found to have been suffered by U.S. workers and businesses and the benefits to the U.S. economy from a stable and predictable rules-based trading system.

The President's approach is inconsistent with the letter of U.S. law and the clear intent of Congress - and the strong bipartisan, bicameral majorities in Congress that have consistently supported the safeguard and fair trade laws. The China-specific safeguard was a vital feature of the China PNTR legislation, which I worked to include because it was clear that China would increasingly be a competitor with U.S. products, as well as a consumer market for those products. As a result, when Congress created the China-specific safeguard, Congress carefully limited the President's discretion to deny relief when the ITC, after an extensive investigation, makes an affirmative determination. This was a key difference between the special China safeguard and the broader safeguard rules.

* * *

A rules-based system has been a key pillar of congressional support for trade expanding efforts, including the legislation to grant permanent normal trade relations (PNTR) to China. As a result, the content of the President's determination reinforces serious concerns about the Administration's dedication to vigorous enforcement of U.S. trade laws and to preserving US jobs. Many of the President's justifications for his denial of relief in this case could be used to deny relief in virtually **every** safeguard case - whether under the China-specific safeguard or under safeguard cases more generally. Many of his other justifications reflect selective examination of the facts, and were specifically considered and rejected by the independent ITC when it came to its unanimous conclusion. As in the two prior cases in which the President chose to deny relief, the case - and the American workers and businesses involved - deserved not a rationalization, but respect for Congress' intent when we created the law.³⁹⁰

(c) Treatment of China as a non-market economy under U.S. antidumping duty law

In U.S. law, the general antidumping rules apply to imports from China as well as other countries. However, U.S. antidumping law provides a special methodology for calculating normal value in proceedings involving imports from countries with non-market economies ("NMEs"). The U.S. Department of Commerce (Commerce) considers China to be an NME country. This means that Chinese exporters are deemed to be operating within a centrally planned economy in which the government controls pricing and production decisions. Therefore, except in cases where individual companies can demonstrate an absence of government control over their export activities, the Commerce treats all exporters as a single

³⁹⁰ *Administration Keeps Unbroken Record of Not Standing Up for American Workers and Businesses Against Injurious Imports from China - Puts Another 5000 U.S. Manufacturing Jobs at Peril*, Comments of Rep. Sander Levin regarding President's Bush decision to deny relief in the DIWF 421 case (March 5, 2004) (emphasis in original); available at http://www.insidetrade.com/secure/pdf5/wto2004_1302.pdf.

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enterprise for dumping purposes by virtue of the presumption of common government control over Chinese exporters' trade activities. Exporters who show an absence of government control, however, are eligible to receive a separate dumping margin specific to their imports.

Because Commerce considers the Chinese economy not to operate on market principles of cost and pricing structures, the prices and costs in the Chinese market are regarded as unreliable, and, as a result, Commerce will not use those prices and costs for purposes of a dumping calculation. Instead, Commerce uses the "NME" methodology which is essentially a modification of the constructed value methodology that Commerce employs in ordinary antidumping investigations. Under the "NME" methodology, Commerce selects the prices of inputs and the expense and profit percentages experienced in other, "surrogate" market economies to build up a theoretical price that would be charged in China if China were a "market economy country." Under this methodology, for example, Commerce might decide to use India as a "surrogate economy" for China, and, using the prices of inputs in India, build up a theoretical price that would have been charged to home-market customers in China, if China were a market economy.

In the U.S.-China Bilateral Trade Agreement (signed November 15, 1999), the United States negotiated with China for the right to continue applying its so-called "non-market economy" methodology to Chinese imports subject to antidumping investigations in the United States for 15 years after China's WTO accession. In the Protocol of Accession, this commitment was multilateralized to all WTO Members for antidumping (and countervailing duty) cases. Thus, for 15 years, to the extent they choose to do so and so long as they consider China a non-market economy country, the United States and other WTO Members may, in determining price

comparability in antidumping investigations concerning imported products from China, employ the special "NME" methodology that is not based on a strict comparison with domestic prices or costs in China. However, China is permitted to demonstrate that market conditions prevail in its economy as a whole or in a particular industry, and, if such a demonstration is accepted by a WTO Member's investigating authority and it concludes that China is a market economy country, the Member must thenceforward employ the normal rules in determining price comparability in antidumping and countervailing duty cases. To date, in U.S. antidumping duty investigations of imported products from China, Commerce has consistently maintained its position that China is a non-market economy country and has applied the NME methodology.

China's commitment with respect to allowing use of the "NME" methodology was set out in Article 15 of the Protocol on Accession and is reproduced in the following box.

Protocol on Accession, WT/L/432 (23 November 2001)

15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the AD Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility

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that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the AD Practices Committee and shall notify methodologies used in accordance with subparagraph (b) to the SCM Committee.
- (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

III. CONCLUSION AND RECOMMENDATIONS

China's record of compliance with its accession commitments and WTO obligations during the first two years of WTO membership is a mixed one. In many areas, China has made a good faith effort to reform its legal structure, amend and enact laws and regulations to conform to WTO requirements, implement changes to its tariff schedule, and transform its trade practices to be in conformity with WTO norms. However, in many significant areas, as described in the body of the foregoing report, China has fallen short of meeting fully its WTO and accession commitments and obligations. Indeed, USTR's 2003 report noted that China's WTO implementation efforts lost a significant amount of momentum in the past year.

Significant areas where China has not fully complied with its obligations to open market access, implement commitments or otherwise meet WTO requirements include, among others, trading rights, agricultural TRQs, VAT applied to semiconductors, auto financing, financial services (both banking and insurance), transparency, and intellectual property rights protection and enforcement.

The challenges posed by China's entry into the WTO are broad. There is no single answer or key to China's compliance with its WTO commitments. The United States and other WTO Members are not faced with just one or two issues requiring resolution. Rather, there are many issues confronting the US and others in their efforts to help China observe WTO norms. The United States can and should work cooperatively with China in those situations where China is willing to work with the United States. But, where China is not a cooperative partner in its willingness to continue moving toward full compliance (for example, in the area of IPR), then the United States should take active and, in some cases, aggressive steps to encourage China to

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fulfill its obligations. The United States should employ the full range of options available in its efforts to help or compel China to achieve full WTO compliance, including consultations and other bilateral meetings, technical assistance, and, if necessary, dispute settlement.

The Commission may wish to consider the following in making recommendations to Congress for promoting and improving China's WTO compliance.

- The United States should be more aggressive in pursuing resolution of chronic compliance problems, including giving serious consideration to filing WTO dispute settlement cases to address the most important and pressing issues. In areas where the evidence demonstrates that China is not even attempting to move forward to implement its WTO commitments, and bilateral discussions or other efforts at resolution have not succeeded, the United States should exercise the option to file a WTO dispute settlement case. The first example of this course of action occurred on March 18, 2004, when the United States filed the first WTO dispute settlement case against China with respect to China's VAT on imported semiconductors.
- The United States should change its policy of non-applicability of countervailing duty laws to non-market economy countries such as China. If accompanied with a reasonable explanation, Commerce has the discretion to make the change in policy itself. If Commerce will not do so, then Congress should legislate that countervailing duty laws apply to NMEs.
- Improvement in China's IPR protection and enforcement will require long-term efforts and dedication. Congress should direct the Administration to prepare a long-term IPR action plan that seeks to maintain pressure on China to reform its IPR enforcement system and that focuses additional technical assistance regarding IPR protection and enforcement toward regional and local governments in China.
- The transitional review mechanism is an important and useful multilateral forum at the WTO for monitoring China's compliance with its WTO commitments. To date, the TRM has not been as effective or useful in assisting China's compliance as envisioned by the United States and other WTO Members. In part, the TRM has fallen short due to lack of procedural specificity in the protocol and because of China's limited and strict interpretation of its TRM obligations. The United States should continue to attempt to make the TRM a forum for clarifying and resolving compliance problems. To the extent possible, the United States should attempt to amend and improve the procedural rules governing the TRM process, including requiring China to submit responses to questions in writing and to provide such responses to Members reasonably far in advance of the TRM meetings.

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- In the protocol of accession, China agreed to be subject to certain special safeguard mechanisms during a transitional period in its WTO membership. The Section 421 safeguard and the special textile safeguard were intended to help US industries suffering market disruption due to increased Chinese imports. To date, the Administration has granted limited relief to domestic producers from Chinese textile imports but has denied relief in every Section 421 case in which the ITC made an affirmative finding of market disruption. Section 421 relief was intended to be reasonably available if the statutory criteria was met for relief. Congress should reexamine Section 421 with a view to revising Section 421 to strictly define the rare and limited instances where the President has discretion to deny relief. Congress should also reaffirm its strong support for application of the special textile safeguard in appropriate cases.