

Philippe Nell

**China's accession to the WTO:
Challenges ahead**

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Philippe Nell, PD Ph.D, State Secretariat for Economic Affairs, Bern. He led the Swiss Delegation during the final stage of the multilateral negotiations on the accession of China to the WTO (1999-2001) and also chaired the negotiating group on textiles and safeguards. He lectures at the Europainstitut der Universität Basel, the University of Fribourg and European University.

Preface

Twenty years ago, only a few would have expected that China is step by step moving from a planned economy to a market economy. China's accession to the World Trade Organization (WTO) in December 2001 will definitely speed up this process by making the transformation much more dynamic.

Therefore, this event is not about „another“ country, i.e. the 143rd one, becoming a member of the WTO. It rather describes a *milestone* in the history of the world economy. It implies that a large economy — probably soon the largest one — made the decision to become a truly market economy and that it also wants to be a big player in world trade policy.

As an economist and the leader of the Swiss Delegation during the final stage of the multilateral negotiations from 1999 to 2001, PD Dr. Philippe Nell is an expert in describing and analyzing the different aspects of China's accession to the WTO. In the following paper, the reader — and those who were present when Philippe gave this talk at the University of Basel — finds answers to important questions like the following ones:

Why did it take so long for China to enter the WTO despite that the country was one of the 23 signatories of GATT in 1947? Which were the results of negotiations in a large number of areas that are highly relevant to international trade in goods, services and factors of production such as capital and know-how? How should we evaluate the experience with China's trade liberalization since December 2001, is it promising?

Philippe Nell shows, for example, that China committed to apply and administer not only central, but also local governments' regulations and rules in a way that these conform to the obligations established by the WTO agreement. In addition, new mechanisms have been accepted in order that a judicial review by impartial tribunals guarantees the implementation of the agreed liberalization. This is very important.

Overall, the paper confirms an insight gained from international trade theory: China's accession to the WTO offers a huge potential for China and the world economy as the living standard especially in China is likely to rise. However, there will be considerable economic adjustments necessary in order to grasp these benefits. These adjustments may very well lead to some losers, at least in the short run. Philippe Nell mentions millions of farmers that will have to change their occupations. Thus, the liberalization process will also require that the country makes this adjustment digestible by offering a comprehensive social network and well-developed education programs.

Indeed, a very challenging task for such a big country that, in a way, just started to become a market economy!

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Rolf Weder
Professor of Economics

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China's accession to the WTO has broad implications for China, its neighbours and the rest of the world.¹ China confirms thereby the irreversible character of economic reforms launched in 1978 and the willingness to pursue the transition from a planned to a market economy. This is all the more remarkable as China faces presently difficult domestic adjustments which may question the wisdom and the pace of ongoing and new reforms. WTO accession does not mean only a significant opening of China's domestic market to foreign products and investors but also a better access for Chinese goods to world markets. Implementation of WTO rules, progressive elimination of restrictions on Chinese imports by several WTO Members as well as of all textiles quotas by January 1, 2005 will contribute to strengthen China's exports. With political and macro-economic stability, skilled labor, low wages and high product quality, China is on the way to become the world's manufacturing powerhouse² and to continue to grow at a fast pace³.

In the trade policy field, China is assuming quickly its role as a forthcoming major world trade player. In Spring 2002, China started a WTO dispute settlement procedure against the United States on their steel safeguard measures and introduced swiftly its own safeguards to fend off potential increases of steel imports resulting from circumvention of United States' and European Union's markets. China also took a variety of trade-defence measures to protect its interests and respond in particular to European sanitary measures banning temporarily Chinese meat exports. For its ASEAN trade partners⁴, China's competitiveness and growth potential represent a threat and an opportunity; in order to establish closer ties, ASEAN and China signed a framework agreement in November 2002 to establish the world's largest free-trade area by 2010⁵.

This paper reviews first briefly the major aspects of China's accession to the WTO, presents then some of the key negotiating results in their own context and addresses finally China's implementation of WTO obligations during its first year. The conclusions look ahead toward China's further integration in the world economy and need for sweeping domestic reforms.

1. The long road back to GATT/WTO

China was one of the twenty-three signatories of GATT in 1947. After China's revolution in December 1949, General Chiang Kai-Shek established the Chinese National government in Taiwan and withdrew China from GATT in 1950. The government in Beijing never recognized this decision. The People's Republic of China received observer status in GATT in 1982 and asked four years later for its GATT status to be resumed. A Working Party was established in March 1987. Progress was slow at best, hampered by non-market economy mechanisms, China's difficulty to launch the required reforms and open sufficiently its domestic market.

In 1995, the GATT Working Party was transformed into a WTO Working Party and its scope thus far limited to goods extended to several goods-related areas, services and intellectual property. China's task in terms of domestic reforms took new dimensions requiring considerable efforts⁶.

Accession to GATT and then WTO has been, by all standards, very long and extremely difficult for several reasons. First, China has been, for some years now, in transition from a planned to a market economy. Incompatible with the WTO, various features of the economy had to be modified. China resisted adaptations in some politically sensitive areas ; WTO Members sought very detailed commitments from China to

address specific problems faced by business in China and to avoid nullification of trade liberalisation through bureaucratic measures.

Second, China has an impressive growth, trade and foreign direct investment (FDI) record. Since 1978, economic reforms were gradually introduced leading to a decrease of agriculture in the gross national product from 30 percent in 1980 to 16 percent in 2000 as the share of services increased from 21 to 33 percent and of industry from 49 to 51 percent. Significant productivity growth led to the remarkable increase in income per capita from US \$ 168 in 1980 to US \$ 727 in 1998. Today, China is the 6th world economy. Between 1993 and 1998, China attracted 26 percent of overall FDI to developing countries with a yearly average of US \$ 40 bn⁷. In 2002, China should supplant the USA as the largest FDI recipient in the world with more than US \$ 50 bn⁸. In 2000, China ranked 7th worldwide for exports of goods with US \$ 249 bn (3.9 % of world exports) and 8th for imports of goods with US \$ 225.1 bn (3.4 percent of world imports)⁹. In services, China ranked 12th for exports with US \$ 30 bn and 10th for imports with US \$ 35.9 bn¹⁰. China is a very sensitive trade partner for several WTO Members and runs substantial trade surpluses with the United States (US \$ 19.7 bn, 2000) and the European Union (US \$ 7.3 bn, 2000).

Third, each accession procedure has a bilateral and a multilateral component. The first one refers to negotiations undertaken between the acceding country and all the WTO Members interested in getting improved access to its market for goods - lowering of customs duties; elimination of non-tariff and other barriers - and for services - opening i.a. of the banking, insurance, telecommunications and distribution sectors. China negotiated bilaterally with more than 40 WTO Members. For the United States and China, these negotiations involved respectively President B. Clinton and Prime Minister Zhu Rongji; they were concluded by US Trade Representative S. Barshevsky in November 1999 in Beijing.

For the United States, the issue was all the more important, that WTO Membership would eliminate the yearly review by Congress of the granting of the most-favoured-nation status (MFN)¹¹ to China. In order to obtain the support of Congress for the permanent normal trade relations legislation (PNTR)¹², the President¹³ needed to present, on one hand, significant potential advantages for the US economy and, on the other, instruments allowing quick action to protect American industries confronted to rapidly growing imports from China. The European Union finalized its bilateral negotiations with China in Spring 2000, Switzerland in September 2000¹⁴ and Mexico¹⁵, as the last WTO Member, in September 2001. China had to consider carefully the requests of each individual WTO Member, explain its own constraints and flexibility and pursue negotiations until agreement.

The multilateral component of the negotiations refers to the Accession Protocol and the Report of the Working Party¹⁶. These texts include China's commitments regarding transposition and implementation of WTO law and the multilateralisation of the results of the bilateral market accession negotiations. At the end of the negotiations, they became an integral part of WTO law.

Fourth, political factors, such as the events of Tiananmen in 1989, the damages to the Chinese Embassy by NATO forces in Belgrade in 1999 or the collision of a US surveillance plane with a Chinese military plane in 2001 suspended, at times for a long period, the negotiations.

The negotiations were finally concluded in September 2001; China was accepted as 143rd WTO Member at the Doha Ministerial Meeting in November 2001 and joined the WTO in December 2001. For Mike Moore, WTO Director-General, „*With China's membership, the WTO will take a major step towards becoming a truly world organization. The near-universal acceptance of its rules-based system will serve a pivotal*

role in underpinning global economic cooperation.“¹⁷

2. Negotiations results: relationship between rules and market access

The negotiations on rules took mainly place at the multilateral level. They represented an interface with the market access bilateral negotiations - whose main results are summarized in Annex 1 - and had two purposes. First, to secure full transposition of WTO law into Chinese law as well as implementation through adequate regulations. Second, to enable the United States to introduce in China's accession Protocol new trade-defence measures.

2.1 Transposition and implementation of WTO law

Some of the issues which raised the most serious concerns or difficulties during the negotiations refer to practices strongly embedded in China and where progress may, at best, take a very long time. It was therefore of foremost importance to discuss them with China and request clear commitments.

a. Transparency, uniform administration and independent review

China has taken major obligations for transparency; only those laws, regulations and other measures affecting trade in goods, services, intellectual property rights or the control of foreign exchange that are published shall be enforced. New laws, regulations or measures should be made available upon request to WTO Members before coming into force, published in an official journal and an enquiry point established. These procedures will facilitate foreign firms' actions; agencies will not be any more in a position to argue that problems under negotiations

are controlled by internal documents which cannot be released. Courts will also have to publish all their judgments.

China has accepted to apply and administer in a uniform and impartial manner all the laws, regulations and other measures of the central government, sub-national and local levels. Local governments' regulations and rules shall conform to the obligations taken under the WTO. China has also agreed to establish a mechanism under which individuals and firms can bring cases of non-uniform application at the local or sub-national levels to the central government. Uniform application is a formidable challenge for China. J. Cohen, Professor of Chinese Law at New York University, raises the following pertinent issues¹⁸: i) Can Chinese administrative agencies, so traditionally intertwined with firms that they have controlled and usually owned, become impartial and independent agencies that have no substantial interest in the outcome of the matters they must decide ? ii) Will provincial and local government institutions, tied up in conflict of interests and political/economic struggles be able to resist the strong pressures of local protectionism ? iii) Will it be practical or even wise to enforce uniform administration of rules in different parts of a country having such diverse regional conditions ?

For judicial review, China has accepted to establish or designate tribunals, contact points and procedures for rapid review of administrative actions relating to the implementation of WTO obligations. Such tribunals shall be impartial, independent of the agency in charge of the administrative enforcement and shall not have any substantial interest in the outcome of the case. Review procedures shall include the opportunity for appeal, without penalty, by individuals or firms. Appeal to a judicial body should be offered if the review is provided by an administrative body.

For Professor J. Cohen, despite positive developments in the past few years and the establishment of a Court system, China will have great difficulty to provide independent judicial review of administrative actions; in particular, corruption is a serious problem for underpaid judges who are also generally associated with social networks which exercise pressures on them.

According to Wei-Wei Zhang, long-held traditions under authoritarian leaders have dictated the subordination of law to political factors¹⁹. As a matter of fact, judges are generally appointed, paid and removed by the local party and government elite. Over 90 % of the country's approximately 180'000 judges are Party members. Courts are usually responsive to local influences more than legal norms. Professor J. Cohen notes that the importance of an independent Court system is so critical that without systemic Court reform, none of the essential programs to reform state-owned firms, the banking and tax systems and the securities markets and to create a market economy inspiring confidence to foreign investors can fully succeed²⁰.

b. Technical barriers to trade (TBT)

Technical barriers to trade playing a very important role for the import of goods, China has agreed to use increasingly international standards thereby harmonizing voluntary national, local and sectoral standards with international ones. China has also accepted to provide a list of relevant local governmental and non-governmental bodies that are authorized to adopt technical regulations or conformity assessment procedures, update continuously the conformity assessment bodies, and, within one year of accession, enact and implement legislation regarding assessment and control of chemicals for the protection of the environment.

In addition, China has modified its internal system by allowing all conformity assessment bodies and agencies to undertake conformity assessment both for imported and domestic products without consideration of the origin of the product. This has required a major internal reform with the merger of two large governmental entities – the State Bureau of Technical Supervision (SBTS) and the State Administration for Entry-Exit Inspection and Quarantine (CIQ) formerly in charge respectively of domestically-produced and imported products-into the State Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine (AQSIQ). Furthermore, differing standards by SBTS and CIQ were abolished under a unified certification system the China Compulsory Certification and a new mark „CCC“ under a new body the China National Accreditation Administration (CNAA) which started to operate on May 1, 2002. These new bodies were established after very long and difficult negotiations under the pressure of WTO Members; they should guarantee national treatment for foreign products.

c. Agriculture

China has taken major commitments regarding overall import policy and tariff-rate quota (TRQ) administration²¹. In addition, China has agreed not to maintain or introduce any export subsidies in agriculture and to limit domestic support - not to be included in the global support measure - to 8.5 percent of the total value of the production on a product-by-product basis and also for measures other than by product although developing countries benefit in the WTO from a rate of 10 percent²². This concession, negotiated by the United States during the multilateral phase, was strongly opposed by China²³. Several developing countries emphasized that China should have benefitted fully from all WTO regimes earmarked for them.

China's position was warranted by the interests of its 900 million farmers, 50 million having an income below the poverty level of US \$ 60 per year²⁴ and excess labor being estimated officially at 180 million²⁵. China has 240 million farms with an average of 0.4 hectares and must feed 20 percent of the world's population with 7 percent of arable land²⁶. With WTO accession, all non-tariff barriers will be eliminated and converted into customs duties. Imports of wheat, soja, corn and comestible oil will increase significantly. The farmers of the North and North-West will face major difficulties. China will have to use its comparative advantage for products such as fruits, vegetables and animal products except milk.

Economic adjustments will be significant: according to official estimates, employment in agriculture during the next 5 years will decrease by 5 million for wheat, 5 million for cotton and 2.5 million for rice²⁷. These farmers will join the 100 million rural workers who have moved to the cities where they live without any residential permit and rights earning their living with small jobs²⁸. For Professor G. Johnson of the University of Chicago, employment in agriculture will decrease by 60 percent during the next 30 years leaving still 100 million farms with an average of 1.3 hectare per farm²⁹.

d. Trading rights and distribution

A few years ago, only a very limited number of Chinese firms were granted the rights to import and export. This reflected the planned economy with centralised decision-making for the allocation of resources. Presently, about 35'000 Chinese companies benefit from the rights to trade. Foreign firms established in China can trade the products necessary for their production and exports.

During the negotiations, China has accepted to liberalize trading rights within three years after WTO accession, except for a list of products reserved to State firms³⁰. As of accession, China has eliminated for all Chinese and foreign firms any requirement to obtain trading rights linked with export obligations, trade balance, currency balance or experience. The capital needed to qualify for trading rights will be diminished and fully eliminated after three years. Trading rights will be fully liberalized for joint ventures with foreign minority ownership one year after accession and for foreign firms with majority holding two years after accession. Three years after accession, all firms established in China will have the right to trade.

Combined with the commitments taken by China for distribution services - elimination of all restrictions for most products - China will undergo major changes in wholesale and retail trade. This will facilitate the creation and the growth of nationwide stores and bring economies of scale. Retailers will be able to lower costs by buying large quantities from producers. Domestic firms will have to improve seriously their logistics and distribution networks before facing full competition from foreign firms.

e. Quotas and licences

China will eliminate all quantitative restrictions on imports as well import licences on a list of products according to a dismantling schedule³¹. Quotas had been reduced over time from 53 products' categories in 1993 to 35 in 1999; important categories yet to be liberalised include cars and their essential parts, refrigerators, washing machines, colour televisions, radios, tape-recorders, watches, textile machines and fertilizers. China has taken precise commitments regarding administrative procedures for import licences and will allocate quotas and licences in a simple, transparent and equitable manner during the

transition period and up to their elimination. The same principles will also apply for the tariff-rate quotas.

In the automobile sector, the gradual abolition of quotas linked with a decline of customs duties from 100 to 25 percent by 2005 will lead to fierce import competition. Furthermore, additional reforms will be introduced in the distribution and repair networks which will be accessible to all car producers including foreigners. A restriction limiting to 50 percent foreign participation in joint ventures producing cars will also be eliminated. A large number of inefficient small firms assembling cars³² will not be able to face the new competitive conditions.

f. Trade-related investment measures

China has accepted to phase out upon WTO accession trade-related investment measures such as hard currency balance, trade balance, local content or export performance. Investment permits, import licences or quotas will be allocated without considering Chinese competition. National or regional requirements or additional conditions linked to research, industrial compensation, use of domestic basic inputs or transfer of technology will not be considered. This commitment led to a modification of the Chinese industrial policy in the automobile sector; two years after accession, the restrictions concerning categories, types and models will be eliminated.

g. Services

Multilateral negotiations in services addressed in particular the following topics:

i) Licences: China has agreed to grant and to register licences - e.g. insurances, banks - with simple, fast and clear procedures. It had

been noted that after a firm obtains a licence from a competent Ministry, registration from another Ministry in order to start effectively operations could still take several months.

ii) Surveillance: China has accepted to separate the surveillance bodies and the services' suppliers, except for mail and railroads. For surveillance to be effective, such a separation is absolutely necessary.

iii) Company law/insurance sector: the most delicate point in the negotiations referred to the request of the United States to preserve China's 1999 bilateral commitment that a US insurance firm - American International Group Inc. (AIG) - that has operated in China for many years wholly-owned subsidiaries, could continue its expansion on that basis. This issue is particularly relevant for AIG in the life insurance field where China has limited foreign ownership to 50 percent. The United States and the European Union agreed during the negotiations on a compromise text stating that a branch or sub-branch is part of a mother company and is not a separate legal entity and that internal branching will be granted on that basis in compliance with China's Schedule of Specific Commitments for Services, including provisions on MFN treatment. For the United States, this text meant that AIG would be able to continue to expand on the same basis (wholly-owned subsidiaries) in the future and for the European Union that the treatment granted to AIG by China after WTO accession would have to be extended to all the WTO Members on a MFN basis. The European Union has further clarified its position by including a footnote in the Services Schedule to that effect³³. In case that China would allow in the future AIG to add branches on a wholly-owned basis and not grant the same treatment to other WTO Members, the issue could be brought to the WTO Dispute Settlement Body for resolution.

iv) Choice of partner: China has confirmed that a foreign investor can

enter into a partnership with any Chinese company, including in another sector of activity. WTO Members insisted on this commitment because, in some sectors, it might be difficult to find a Chinese partner (insurance, for instance).

v) Equity modification: China has agreed that a modification of equity will be accepted if it is covered by China's commitments. This means that an increase in equity will not require to start all over the full procedure.

These obligations insure an effective opening of the services sector i.a. for banking, insurance and securities. The opening of the banking sector will bring strong competition to local banks. Presently, more than 500 foreign banks are established in China with only 3 percent of the total of the balance sheets of all the banks. Foreign banks will have advantages in consumer banking (investment products, credit cards,..) and corporate banking for transaction-based business. According to experts, foreign banks could rapidly take a 50 percent market share for bank services such as trade finance, cash management and credit card transactions. Within 10 years, foreign banks' market shares could reach 15 percent for deposits in foreign currencies, 10 percent for accounts in local currency and 15 percent for credits in local currency. The Chinese banking sector remains vulnerable in particular with the management of considerable level of bad debt owed by state-owned firms. In this respect, the key challenge for the government remains to address the problem of the non-performing loans and to implement prudential norms and risk management practices comparable to international ones to strengthen Chinese banks competitiveness.

In the insurance field, a major opening of a growing and increasingly competitive market will take place. Most life insurance companies have payout obligations significantly higher than their actual return on

investments. Poor business practices result from the lack of qualified staff and the oligopolistic structure of the sector. In order to adjust to foreign competition, domestic firms will have to adopt international business and prudential practices.³⁴ Foreign firms will be particularly active in the life sector which is not very developed in China. At the end of 2001, China had 52 insurance companies, including 5 state-owned, 15 shareholding firms, 19 joint-ventures, 13 branch companies and over 300 intermediary companies. The aggregate premium income in 2001 reached US \$ 25.4 bn, 458 times the 1980 level³⁵.

In the securities area, the degree of change will be determined by the convertibility of the yuan, the development of the Chinese securities market and the extent to which the banking sector can be reformed and non-performing debt converted into equity. In the telecommunications' services area, WTO accession will accelerate the already fast pace of change. There is, however, no indication how new licences will be granted or that local companies may sell stakes.

h. Intellectual property

China has made the protection of intellectual property rights (IPR) a central component of its reform and opening-up policy aiming at achieving world standards. Improvements to China's intellectual property regime started in the early 1990's in particular in the framework of bilateral agreements with the United States³⁶. During the accession process, China has progressively amended its major intellectual property-related legislation as well as relevant legislation on undisclosed information. China has provided a long list of laws and administrative regulations on IPR to be revised or abolished upon accession and assured that its patent, copyright and trademark laws as well as legislation on geographical indications would be made compatible with

the WTO Trade-Related Intellectual Property Rights Agreement (TRIPS)³⁷.

China has taken the commitment that relevant laws, regulations and other measures would guarantee national and MFN treatment to foreign right-holders regarding IPR in compliance with the WTO TRIPS Agreement. On the important issue of piracy, China is taking measures to crack it down and strengthen anti-piracy actions; legal publications and education of the public are also undertaken to that aim.

In the area of patents, better respect of holders' rights will require fundamental changes linked i.a. with the following four key problems³⁸: a) the Chinese economic system implies that firms do not currently develop and own their own intellectual property rights, and also do not systematically use patents when they should do so; b) the objective, thus far, has been to concentrate on technical achievement more than on patent management; c) investment in patent technology and registration of patents do not bring the expected economic benefits because patents are not respected; d) the examination time for new patents is too long.

Further progress in the IPR area is considered critical by foreign producers and investors. The weakness of the IPR system in China implies that foreign investors often prefer full ownership to partial ownership or joint ventures and may restrict technology transfer to the essential.

2.2. Transitional trade-defence measures

Trade-defence³⁹ and review instruments⁴⁰, agreed upon in the China-United States bilateral negotiations, were multilateralised in China's accession Protocol. They will be applied on a transitional basis.

a. Textiles safeguard mechanism

WTO Members will have the possibility to apply a safeguard mechanism in case of market disruption caused by imports of products of Chinese origin until December 31, 2008. Consultations will have to take place before imposing measures. As soon as consultations will start, China will limit its exports to a level not higher than 7.5 percent more than the average of the first 12 months of the past 14 months. If there is no agreement, the importing country can continue to limit Chinese imports. The measures are foreseen for one year and can be renewed.

China is presently the largest world exporter of clothing despite quotas by importing countries which will be phased out by January 1, 2005⁴¹. With WTO accession, it is foreseen that the Chinese textiles and clothing industry will grow significantly and increase its share of world's wearing apparel exports from 18 to 44 percent and of textiles from 8 to 10 percent⁴². Textiles will be a very significant winner of China's accession to the WTO with very substantial job creation.

b. Transitional product-specific safeguard mechanism

The WTO has a safeguard agreement which allows Members to take special measures in the case of a strong surge of imports threatening an industry. These measures, however, must be taken against all WTO Members except developing countries with an import share lower than 3 percent.⁴³

The transitional product-specific safeguard mechanism refers to the situation 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. It is a safeguard system exclusively limited to Chinese products with its

own rules. Members can use this safeguard for 12 years. The first transitional safeguard under Section 421 of the PNTR legislation has been decided by the US International Trade Commission (ITC) on October 29, 2002. The ITC has proposed to President G. W. Bush to provide relief to US producers of devices used to raise seats on motorized scooters and other products with a three-year import limitation as import growth has caused major disruption to domestic producers⁴⁴.

c. Transitional regime for price comparison in dumping and subsidies investigations

China being a socialist market economy in transition⁴⁵, particular measures were negotiated to compare Chinese with market-economy prices for subsidies and dumping investigations. For dumping, the importing Member must take the Chinese prices and costs if market conditions prevail in that sector, or, if it is not the case, a methodology based on special rules notified to the WTO. These special provisions will be in force for 15 years.

d. Transitional review mechanism

China's implementation of its commitments will be reviewed annually by the WTO General Council on the basis of the report of its subsidiary bodies⁴⁶ during 8 years and then a last time after 10 years. China will have to present detailed information on its trade regime and answer Members' questions on the implementation of its WTO obligations. One objective of the review is to point to compliance problems while avoiding dispute settlement procedures. China will also have the possibility to raise any question referring to Members' obligations - i.a. dismantling of restrictions on Chinese imports - resulting from the Protocol of accession.

3. First assessment of China's implementation of WTO obligations

The first review has taken place during the period July-December 2002. China had not yet been WTO Member for a full year, numerous commitments were subject to transitional periods or dismantling schedules, all the new legislation and implementing regulations for WTO obligations had not yet been translated in English and made available to WTO Members. Although it was not possible to assess fully China's transposition and implementation of WTO law, the review noted China's remarkable efforts to modify laws and issue implementing regulations. Several areas requiring further progress in the coming years were also identified.

Major problems referred to non-tariff barriers, technical barriers to trade, trade-related investment measures, trade-defence measures, access to market for services and enforcement of intellectual property. The US Chamber of Commerce has also published a report on China's compliance with WTO obligations focusing on services, intellectual property rights and agriculture⁴⁷.

3.1. Goods

3.1.1 Non-tariff barriers

a. Agriculture and fertilisers

China's practice has seriously hampered access to the Chinese market for some products, tariff-rate quota (TRQ) for 2002 being only announced in April instead of January 2002. The share of the TRQ to be issued for non-state trading firms went partly to locally or provincially state-owned companies. Their effectiveness has been questioned as there is no obligation for state firms to use them partially or fully.

Cotton quotas were not transparent; quotas to non-state firms were mainly allocated to firms specialized in processing cotton and re-export.

On the technical side, China has recently announced two new quality tests on imported cotton which may deter foreign exporters due to their specificity.

TRQ for wheat allocated to non-state entities were linked with the obligations to process and re-export subject to payment of the out-of-quota duties on flour or other products. In the meat sector, China has set very high safety standards for imports of poultry and pork not met by Chinese domestic producers. Exports of fresh potatoes have been impeded by China's phytosanitary measures related to pest-risk, China progressing very slowly in the risk analysis. For several imported products such as meat and bone meal and soybean meal, competitive conditions on the Chinese market were seriously altered with the derogation on VAT payment of 13 percent for locally-produced substitutes such as fish meal. Imported diammonium phosphate and urea faced similar problems⁴⁸.

b. Manufactured products

China's import regime for manufactured goods is characterized by several non-tariff barriers such as import quotas, specific tendering and import licensing all of them subject to elimination at the end of transitional periods.

The following problems were highlighted: a) lack of transparency for the allocation of import quotas for cars, car parts and tires; b) WTO rules not followed for the allocation of quotas for machinery and electrical products imports by requiring activities by the interested firms in scientific research, training, culture and social actions, multiple approvals at different governmental levels as well as disclosure of sensitive information such as price; c) difference in the consumption tax between locally-produced and imported goods (incompatible with GATT 1994 Art. III) ;

d) certificates, not foreseen by the Information Technology Agreement for 15 products, linked with information on final uses in order to reduce or eliminate import duties; e) trade restrictions for AQSIQ⁴⁹ licensing requirements, applying only to imported goods, requiring multiple approvals at different levels of government and detailed information; f) export licences⁵⁰ and export duties for products not foreseen in the Accession Protocol; g) prohibition of import of some used industrial electrical products (contrary to GATT 1994 Art:XI:1 and China's Protocol of Accession); i) customs duties levied on certain photographic products through specific duties (yarn/square metric basis) much higher than bound tariffs.

3.1.2 Technical barriers to trade

China has established an enquiry point, published its working procedures and designated a notification authority. In order to meet the commitment of increasing by 10 percent within 5 years the share of international standards in China's technical regulations, a nationwide program and an annual implementation plan have been launched. Standardization has been recognized as a major instrument for scientific and technological development.

Problems identified referred to: a) the failure of the WTO notifications to make specific reference to a publication (MOFTEC Gazette, AQSIQ Bulletin); b) for several notifications, the time between consultation and adoption was far too short for comments to be duly taken into account; c) some new standards, although open for consultations, were not notified and should imply a volunteer character; d) the list of the products requiring a CCC certification to enter into China was larger than the list of products for which certification is being issued; e) due to a lack of experience and limited assistance from WTO Members, China has not yet been able to make publicly available procedures to implement Art. 2.7 of the TBT Agreement⁵¹. Finally, clarifications were

sought on the implementation of the single mark and criteria to add or withdraw products from certification requirements, and, procedures for recognition of conformity assessment bodies, measures to eliminate repetitive assessments for the same products⁵² as well as recognition of conformity assessment results by provincial relevant authorities.

3.1.3 Trade-related investment measures

China has deleted from its legislation provisions on foreign exchange balancing⁵³, local content⁵⁴ and export performance⁵⁵ requirements. By the end of 2002, higher levels of investments in the automobile sector to be approved by provincials authorities shall be published. China has reiterated that any law or regulation applied at the local level must be conform to those at national level.

Particular interest was expressed regarding the treatment of provisions - not conform with the WTO Agreement on Trade-Related Investment Measures - included before China's accession to the WTO in contracts, memoranda of understandings or other legal documents binding foreign investors. China has indicated that contracts may be modified subject to approval from the competent authority who approved the original contract. However, the investors must consent unanimously to the revision of the agreement. It was also noted that China has maintained provisions in some laws⁵⁶ referring to technological transfer. According to China, this does not represent a compulsory requirement but an encouragement to foreigners to transfer technology to meet China's development needs.

3.1.4 Trade-defence measures

China has adopted or modified legislation on anti-dumping, countervailing and safeguard actions. The objective of the review was

not to discuss specific measures taken by China but the rules transposing the corresponding WTO Agreements. Most of the questions raised by China's trading partners referred to anti-dumping rules. It was widely recognized that China has significantly modified its existing regime toward WTO rules. Some key provisions, however, were found to be omitted, some ambiguous and some elements not foreseen by the WTO included. Particular attention was given to the factors that China will examine in conducting injury analysis, the definition of «interested» and «related» parties, the calculation of export price and normal value, the use of facts available in anti-dumping determination, the definition of domestic industry, the investigation procedures, the prerequisites for provisional anti-dumping measures, the method to determine anti-dumping duties and the review of duties.

Major concern was expressed regarding provisions according to which China may take «corresponding measures» against a WTO Member that «discriminatorily» imposes anti-dumping measures against exports from China; such retaliatory actions are not foreseen by the WTO. The same provision was also identified in the administrative rules regarding safeguards.

For safeguards, clarifications requested by Members covered i.a. notification of the relevant domestic legislation referring to the WTO, determination of like or directly competitive products, initiation of an investigation and procedures, treatment of confidential information, determination of injury and causation, provisional and definitive safeguard measures, treatment of imports from developing countries, and, duration and review of safeguard measures.

3.2. Services

The most important aspect of services' liberalisation and China's key implementation problems refer to mode 3 (commercial presence or,

in other words, foreign investment in services) of the General Agreement on Trade in Services (GATS). In 2002, China has modified its policy on foreign investment and corresponding regulation⁵⁷.

In banking, the implementing rule⁵⁸ - according to which a foreign financial institution being refused to establish commercial presence in one city, cannot file a new application within one year - is not compatible with China's commitments⁵⁹. It results that foreign banks face additional limitations in competing against local banks. Progress must be made in the coming years for a more open, transparent and market-driven banking and financial system⁶⁰.

In *insurance*, the Administrative Regulations for the Administration of Foreign-Invested Insurance Companies are difficult to apply because they must be read in conjunction with other laws and measures not clearly identified. Measures which take precedence are unclear. According to the US Chamber of Commerce, the new insurance regulations are vague and lead to a broad degree of discretion by the authorities; foreign-invested and Chinese insurance firms should be able to comment on new regulations before adoption. Furthermore, the Regulations do not fulfil China's WTO obligations⁶¹ as they maintain a multi-stage application process for a licence; procedures remain very slow and lengthy. Referring to the establishment of branches or sub-branches by foreign insurers already established in China, the Chinese Insurance Regulatory Commission (CIRC) does not meet China's WTO commitments⁶² by requiring that non-life foreign-invested firms can open branches only if they first establish as a subsidiary. China solvency and capital requirements⁶³, which predate WTO accession, are difficult to justify on prudential grounds and constitute prohibitive barriers to market entry and expansion; according to GATS, such measures should be reasonable and prudential measures shall not weaken market access commitments. CIRC being a relatively small

agency, the United States have offered technical assistance and capacity building in particular in the field of licensing.

In *telecommunication services*⁶⁴, market access under modes 1 (cross-border supply) and 3 (commercial presence) takes place within a six-year time-table. The Administrative Regulations on Operational Licences for Telecommunications Business entered into force January 1, 2002. They outline the procedures for investment approval for basic and value-added telecommunications operators, and, include rules on competition, safeguards and interconnection. The legislation does not regulate clearly the procedures for interconnection negotiations to a major supplier in terms of transparency and dispute settlement, or, stipulates objective criteria for the qualifications required for basic and value-added telecommunications business. Major progress must also be achieved to establish a fully independent regulatory regime to ensure enforcement of WTO commitments, fair treatment of all market participants and to protect the rights of consumers. The US Chamber of Commerce also emphasizes the complexity of licensing procedures for basic and value-added services as well as the length of approval processes.

In *distribution services*, China has taken commitments referring to the establishment of joint ventures active in wholesale and retail sales⁶⁵. Market access will be progressively improved within a three-year period in parallel with the granting of trading rights. The corresponding Regulations⁶⁶ foresee that foreign partners must have sold more than US \$ 2.5 bn (wholesale) and US\$ 2 bn (retail) during the three years preceding application and have total assets of US\$ 300 million one year before application. The Regulations also limit to 0.3 percent of total sales for a maximum ten-year period the fee to be paid to the foreign partners or the user of a trademark, business name or technology-transfer contract. Finally, the United States had particularly insisted during the negotiations

on motor vehicle financing by non-bank financial institutions in order for key car companies to boost sales. Draft rules were issued in October 2002 by the Central Bank. They present the detailed requirements to open an auto-financing company⁶⁷.

In *tourism and travel-related services*, Chinese legislation will have to be amended in due time to cover commitments referring to the establishment of branches by a joint venture travel agency or tour operator within six years after accession. In addition to being engaged in travel business and having a turnover exceeding US\$ 40 million, the corresponding Regulation⁶⁸ requires foreign-invested firms to be a Member of the Chinese Tourism Services Association.

In *transport services*, various inconsistencies with China's obligations were noted. Limitations to the operations of foreign-owned road transport firms to 12 years with an extension to 20 years provided 50 percent of its capital is invested in the basic construction of passenger and freight transport stations⁶⁹ are not reflected in China's services schedule. For freight-forwarding agency services, various market access restrictions were introduced. In February 2002, the monopoly of China Post was extended to: a) letters with the name and address of a natural person and according to specific conditions for letters equal to or lighter than 500 gr.; b) official documents of the Chinese government⁷⁰. The express delivery system is supervised and regulated by China Post. To provide delivery services, firms must apply for an entrustment licence to the provincial branches of China Post. The Notification's requirement for foreign-invested enterprises' minimum registered capital (US \$ 5 million) and foreign ownership (50 percent) differs from China's Services Schedule (US \$ 1 million; foreign majority ownership one year after accession). These measures are more restrictive than the regime prior WTO accession, suggesting China violates the rollback prohibition of GATS commitments. China has argued that the «entrustment» is

necessary for the protection of essential security interests referring to the anthrax threat. Restrictions on weight, price and addresses are not linked with security.

3.3. Intellectual property

Among the major laws, the *copyright law* was amended in August and October 2002 enlarging the rights protected, clarifying the rights of performers and producers, adding provisional measures of property and evidence preservation, providing statutory damages with payment of damages by the infringers up to 500.000 yuan, and, increasing administrative punishment for infringements harming the public interests. The law has also been brought into compliance with the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performance and Phonogram Treaty. Problems identified thus far include art. 17 of a new software regulation allowing the copy of any software used for learning or to study a software. On the implementation side, some provisions referring to Art. 39.3 of the TRIPS Agreement (data exclusivity) have not yet been approved⁷¹.

The *patent law* was amended in 2002 to stipulate i.a. conditions for compulsory licensing of patents, provisional measures and criteria for calculating infringement damages with a multiplied licensed fee. The length of patents has been extended to 20 years.

The *trademark law* had been amended before accession in October 2001 by adding the protection of geographical indications, enlarging the scope subject-matter to be protected, adding protection of well-known trademarks, provisions relating to right of priority, judicial review of administrative determinations, and, enhancing investigation and punishment against infringements.

China's legislative efforts in the intellectual property area have been widely recognized as remarkable. China has a legislation compatible with the TRIPS Agreement going even beyond in some areas such as customs controls. Effective and reliable enforcement, however, still faces substantial social, political, legal and economic barriers. Counterfeiting⁷² and piracy⁷³ are widespread. Foreign intellectual property owners endure significant losses and costs attempting to identify, capture and destroy false products. According to some estimates counterfeiting and piracy employ between 3 to 5 million people and generate a yearly turnover of US \$ 40 to 80 bn⁷⁴. With rising unemployment, drastic action against these illegal activities may endanger social stability.

On the enforcement side, China has a full-fledged system. Right holders of intellectual property may go to Court or file a complaint to the competent administrative bodies. Enforcement procedures foreseen in Part III of the TRIPS Agreement are applied in China on the basis of criminal law, general principle of civil law, anti-unfair competition law and relevant procedures in criminal procedure law, civil procedure law and administrative procedure law. The patent, copyright, trademark and anti-unfair competition laws as well as the Regulation for the protection of layout-designs of integrated circuits (trade secrets, geographical indications) prescribe that the infringer shall compensate the right holder for its losses.

The scale of the problem is highlighted by the large number of interventions by the authorities. In 2001, 977 *patents* disputes and 413 cases of fraudulent patents were dealt with at all levels of the patent administration bodies in China. For *trademark*, 41'163 law-violation cases were registered, 55.4 percent being trademarks infringements. Authorities confiscated 250 million illegal trademark signs and 14'000

molds, blocks and tools, destroyed 2'777 tons of products, and, charged CNY 210 million of fines, damages to be paid to right owners amounting to CNY 3.3 million. *Copyright* infringement covered 4'416 cases of which 3607 were concluded with the payment of a fine by the infringer⁷⁵. Enforcement forces intervened more than 160 times against markets by illegal publications and unregistered shops.

Chinese customs authorities, through close cooperation with judicial and administrative bodies as well as right holders investigated 330 infringement cases for a total value of CNY 135 million; 297 cases referred to export or import of counterfeited goods. Domestic right holders were involved in 116 cases and foreign right holders in 230 cases. In 2001, the State Customs Administration received more than 800 requests for protection from rights holders⁷⁶. Piracy and counterfeiting are particularly detrimental to rights holders in critical areas such as watches, leather products, pharmaceuticals, electronics, cosmetics, auto parts, cigarettes, motorbikes, films, batteries and software⁷⁷.

Enforcement is widely considered as been very poor with light punishments; counterfeiting can also be highly sophisticated and very difficult to detect. Enforcement has major systemic weaknesses. First, counterfeiting of trademarked products is checked and sanctioned by government administrative bodies such as the Bureau of Administration for Industry and Commerce and the Bureau of Quality and Technical Supervision; however, the flow of information between units of the bureaucracy often allows producers of counterfeited goods to be informed of an upcoming raid. Second, infringers must pay a fine which depends on the quantity and value of the products involved; subject to negotiations, the fine is reduced and amounts for watches to an average of CNY 30'000 for each case. Counterfeited goods are confiscated and the licence of the firm is revoked; producers, however, often

operate without any licence. Third, in airports, counterfeited goods are sold in areas where administrative bodies are denied access making it difficult to organize raids: prices are high leading the customers to believe that the products are real ones. Fourth, several trading firms export counterfeited goods to Europe. They do not produce any good but act as intermediaries between the producers and the sellers in Europe. Administrative bodies have so far been reluctant to control them because they are state-owned. Fifth, wholesale markets of counterfeited goods have been established in several Chinese cities. Large quantities are sold to buyers from all over the world. Shopping centres also sell counterfeited goods. Despite the fact that raids are regularly organised against these wholesale and retail markets, they do not cease their activities and include the fines in their prices. Sixth, the situation in China and in some Asian neighbouring countries is so serious that some Western industrial interests have become very active to identify producers, wholesalers and retailers of counterfeited goods in view of organizing raids with local enforcement bodies. In 2001, 127 raids were undertaken in China under the initiative of a specialized firm established in Hong Kong for a total of 943'281 counterfeited watch components and 77'310 counterfeited watches⁷⁸.

4. Overall assessment by business

The relative importance of various problems facing business in China is well captured by a 2002 survey of the Asian Development Bank. For foreign investors, major issues referring to the market environment include first over-regulation and taxation (36 percent), second local protectionism and monopolies (24 percent), third unfair market competition (20 percent) and fourth intellectual property and fake products (16 percent). Major difficulties on the operational side include lack of transparency, red tape, arbitrary approvals and government interference (30 percent), market access barriers and distribution

problems (17 percent) as well as partner, cultural and language misunderstandings (12 percent).

Domestic private firms have identified the same problems for the market environment giving more importance to unfair market competition (41 percent), intellectual property (23 percent) and less to over-regulation (20 percent) and local protectionism (14 percent). Referring to the operational challenges, domestic firms rank as most important regional protectionism (25 percent), market size (23 percent), government permit (19 percent), management weaknesses (16 percent) and government policies (17 percent)⁷⁹.

These observations show that both domestic and foreign-owned firms identify the same key problems in the market environment and that the transition from a planned to a market economy raises very complex competition issues. China will remain for some years a very difficult market for investment and business. Improvements will depend from overall progress on several fronts.

Conclusion

China's accession process to the WTO has been a significant engine behind the economic reforms of the 1990s. One year after membership, China's legal system is broadly compatible with WTO law. Implementation, however, raises very serious concerns in several areas covering tariff-rate quota, licensing, anti-dumping rules and intellectual property.

Improvements in China's implementation of WTO law in critical areas cannot be expected quickly due to the subtle relationship between culture, economic interests, judicial and political power. Domestic policy faces very serious challenges and must address urgently six key areas,

namely: first, corruption with an estimated cost of 13.2 to 16.8 percent of the gross domestic product⁸⁰; second, the inefficiency of State firms, the bad management of small and medium firms and the overhaul of the banking sector plagued with bad loans to State firms; third, the establishment of a new social security system at the State level taking this responsibility away from the State firms; fourth, the implementation of regulations on market rules and of an efficient, transparent, independent and reliable judicial system; fifth, the absorption of a large number of industry workers laid off by their firms as a result of the opening of the Chinese market and of farmers moving to the cities; and, sixth, a growing disequilibrium between the rural areas and the Western part of the country and the coast where cities and industries will continue to attract the bulk of foreign investment.

All in all, better access to world markets, increased competition, opening of the economy through WTO accession and enhanced relationships with ASEAN neighbours have become indispensable to pursue the transformation of the domestic economy to a fully competitive one and to continue to move up the ladder of development.

China will proceed with an orderly integration in the world economy and play progressively on the world scene the role warranted by its economic potential. Huge projects such as the organisation of the 2008 Summer Olympic Games in Beijing and the 2010 World Fair in Shanghai will contribute to reinforce China's international image. The very substantial social costs linked with the transition toward a market economy, the growing domestic income and regional inequalities, and, the opening to foreign competition will represent the largest risks for the coming years. To succeed, China will need to pursue reforms, allocate substantial resources to address key social problems and benefit from strong and constructive cooperation from the rest of the world. In such a new and growing interdependence, all parties will be

winners provided they keep their markets open.

As a vision for the future, the market economy will work its way through in China continuing to increase living standards, contributing to the establishment of an independent judicial system, bringing under control corruption and intellectual property protection and moving progressively the human right issue toward Western standards. Then, with China becoming the engine of growth of East Asia and fully integrated in the world economy, societal developments leading to democratic institutions will complete economic achievements.

Annex 1

China's accession to the WTO: Summary of major market access commitments

Goods: Tariffs, Export Subsidies and Quotas

China will cut its average import tariff for agricultural products from 31.5 percent (1999) to 14.5 percent by 2005 based on a tariff-quota system with import quotas increasing over time. The tariffs will range from 0 to 65 percent with the highest rates applied to cereals.

The average tariff on manufactured products had already been cut from 45 percent (1992) to 23 percent (1995), to 17 percent (1997) and will reach to 8.9 percent by 2005. Tariffs on automobile imports will be cut from the pre-accession range of 80-100 percent to 25 percent and quotas will be eliminated by 2005; tariffs on information technology products such as computers, semiconductors, and Internet-related equipment will be reduced from an average of 13.3 percent to zero, and tariffs on products such as wood, paper, chemicals, and medical equipment reduced to 7 percent by 2003.

China will eliminate all export subsidies and quantitative restrictions on imports within five years of joining WTO.

China will eliminate dual pricing and differences in treatment for goods produced for the domestic and export markets.

Price controls will not be used to protect the domestic economy.

Within three years after accession, all firms will have the right to import and export all goods and trade them in China with limited exceptions.

China will ensure that State-owned enterprises will make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability, and provide foreign firms with the opportunity to compete for sales and purchases on nondiscriminatory terms and conditions.

Services: Banking

Foreign financial institutions are allowed to provide services in China for all clients for foreign currency business upon accession.

Foreign banks will be allowed to conduct local currency business with Chinese enterprises within two years after accession and with individuals after five years.

The current geographic and customer restrictions on foreign banks' operations will be removed within five years of joining the WTO.

Services: Insurance

For life insurance, China will allow 50 percent foreign ownership in joint-ventures.

For non-life insurance, China has allowed 51 percent foreign ownership upon accession to the WTO and within two years the establishment of wholly-owned subsidiaries .

For brokerage of large-scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance, joint-ventures with foreign equity of 50 percent are allowed upon accession; within three years, foreign equity share shall be increased to 51 percent and wholly-foreign owned subsidiaries allowed within five years.

Licences will be granted only on the basis of prudential criteria and geographical restrictions will be phased out within three years. Within five years, foreign insurers will be able to expand their services for group, health and pension lines of insurance.

Reinsurance is completely open upon accession with 100 percent foreign ownership and no restrictions

Services: Securities

Minority foreign-ownership joint-ventures will be allowed to engage in fund management on the same terms as Chinese firms; three years after accession, foreign ownership will be allowed to raise to 49 percent. Underwriting of domestic equity issues, underwriting and trading in international equity, corporate and government debt issues is allowed for 33 percent-owned joint ventures.

Services: Telecommunications

China will phase out all geographic restrictions within two to six years depending on the services. China will progressively phase out all restrictions for paging and value-added services within two years, mobile voice and data services in five years, domestic and international services in six years. Foreign investment in joint ventures shall increase from 25 percent upon accession to 35 percent one year later and 49 percent or 50 percent three to six years later depending on the services. China will implement the pro-competitive regulatory principles of the WTO Basic Telecommunications Agreement (including interconnection rights and independent regulatory authority) and allow foreign suppliers to use the technology of their choice.

Other Commitments:

China has provided a broad range of commitments to open up the country's professional services, including legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, and computer-related services.

China will allow unrestricted access to the market for hotel operations, majority ownership for hotels upon accession and full ownership within three years.

China will not only allow trading rights (the right to import and export) but also distribution rights for foreign firms, including in areas such as wholesale and retail trade, after-sale service, repair and maintenance.

China will allow imports of motion pictures and 49 percent foreign ownership in joint ventures involved in the distribution of motion pictures, construction and renovations of cinema theatres. China will allow import of motion pictures on revenue-sharing basis with a total of 20 motion pictures per year.

China will allow foreign non-banking firms to provide auto-financing.

Footnotes

- ¹ State Secretariat for Economic Affairs, Bern. The author led the Swiss Delegation during the final stage of the multilateral negotiations on the accession of China to the WTO (1999-2001) and also chaired the negotiating group on textiles and safeguards. He lectures at the Europainstitut der Universität Basel, the University of Fribourg and European University. The views expressed are exclusively the author's.
- ² China is the world's largest producer of steel, cement, flat glass, construction ceramics, color televisions and textiles and accounts for 50 percent of world's production of cameras, 30 percent of air conditioners and televisions, 25 percent of washing machines and nearly 20 percent of refrigerators. Source: Far Eastern Economic Review, October 17, 2002.
- ³ The State Development Planning forecasts China's average annual gross domestic product (GDP) growth at 7.2 percent (base case) and 5.7 percent (lower case) for the period 2000-2020. These projections are confirmed by London Based Consensus Economics Inc. with an annual average of 7.4 percent through 2012. Source: B. Murray, China's prospects, paper delivered at the Conference „Market reforms in China: Hong Kong and other catalysts for change“, The Royal Institute for International Affairs, London, November 26, 2002.
- ⁴ The Members of ASEAN are: Indonesia, Malaysia, Philippines, Singapore, Thailand, (founding Members 1967); Brunei (1984); Vietnam (1995); Myanmar (1997), Laos (1997) and Cambodia (1999).
- ⁵ This free-trade area will encompass 1.7 billion people and US \$ 2 trillion GDP. Source: B. Murray, op. cit.
- ⁶ For an analysis of important issues linked with China's accession to the WTO, see: Hiddo Houben, China's Economic Reforms and Integration into the World Trading System, Journal of World Trade, 33 (3), 1999.
- ⁷ Source: World Investment Report, UNCTAD, 2001, p. 23.
- ⁸ FDI reached US \$ 40 bn in the first nine months of 2002. Source: M. Davies, A vision of Hong Kong's future as a Business Center in a Growing China, paper presented at the Conference: Market reforms in China: Hong Kong and other catalysts for change, The Royal Institute for International Affairs, London, November 26, 2002

⁹ Source: *International Trade Statistics*, WTO, 2001, p. 21. During the first nine months of 2002, exports grew by 19.4 % and imports by 17.2 %. Source: M. Davies, op. cit.

¹⁰ Source: *International Trade Statistics*, op.cit., p. 23.

¹¹ MFN means that concessions granted to one WTO Member under WTO law are to be extended to all WTO Members. The biggest exception to that regime is Art. XXIV of GATT referring to customs unions and free-trade zones.

¹² Until 2001, the US Congress had to review on a yearly basis the US-China relations and renew the MFN status to China enabling China to have access to the US market on the same conditions as WTO Members on the basis of Chapter 1 of title IV of the Trade Act of 1974 to the People's Republic of China. With China's accession to the WTO, Congress passed PNTR legislation -normalising thereby trade relations with China - which includes 7 titles, I: Normal Trade Relations (Sec. 101-104); II: General Provisions (Sec. 201-204); III: Congressional-Executive Commission on the PRC (Sec. 301-309); IV: Monitoring and Enforcement of the PRC's WTO Commitments (Sec. 401, 411-413, 421); V: Trade and Rules of Law Issues in the PRC (Sec. 511-514); VI: Accession of Taiwan to the WTO (Sec. 601); VII: Related Issues (Sec. 701).

¹³ In April 1999, President B. Clinton did not conclude the negotiations because his advisers were of the opinion that the concessions made by China were not sufficient to pass PNTR through Congress. Expecting major improvements in China's market access through WTO Membership, the US business community was disappointed by further delays and expressed it clearly to the US administration; the bilateral agreement reached in November had no improvement as compared to the April draft.

¹⁴ Owing to the Swiss requests in particular in the insurance, banking, inspection and tourism sectors, China could only finalize negotiations with Switzerland after having concluded with its two major trade partners, the United States and the European Union. Although it was not possible for Switzerland to obtain significant additional concessions from China, particular arrangements could be negotiated in the inspection sector and commitments could be obtained for the granting of insurance licences.

¹⁵ Mexico finalized its bilateral negotiations only during the last session of the Working Party. The major problem referred to anti-dumping measures maintained by Mexico against imports from China; the two parties agreed that Mexico could keep them for 6 years (initially, Mexico wanted 15 years) and that they would not be subject to the provisions of the WTO Agreement or the anti-dumping provisions of the Protocol. They cover more than 1200 tariff lines with products such as textiles, clothing, footwear, organic chemicals, electrical machines, toys, pencils and tools.

¹⁶ The full texts of the Protocol (10 p.) and the Working Party Report (164 p.) are available on the WTO website under http://docsonline.wto.org/gen_search.asp (Under simple search, introduce: Report of the Working Party on the accession of China to the WTO). The schedule on services is also available on the WTO website.

¹⁷ *WTO successfully concludes negotiations on China's entry*, WTO, Press release, September 17, 2001

¹⁸ Source: US Congress, Opening Statement before the First Public Hearing of the US-China Commission, J. A. Cohen, Washington, D.C. June 14, 2001.

¹⁹ Wei-Wei Zhang, *Transforming China* (McMillan Press, London, 2000) pp. 9-20.

²⁰ J. A. Cohen, op. cit.

²¹ Tariff-rate quota: system devised during the Uruguay Round for agricultural products in order to maintain a more-or-less equivalent level of protection through the replacement of all the non-tariff measures with tariffs while maintaining the preceding level of imports; this was achieved with lower tariffs for specified quantities, and higher tariffs (sometimes much higher) for quantities exceeding the quota. Under this system, China will apply a lower tariff for imports such as rice, wheat, cotton, sugar, soybean oil, palm oil and rapeseed oil up to a specified quantity.

²² WTO Agreement on Agriculture, Art. 6, § 4

²³ Initially, the United States asked China to limit domestic support at the developed country's level of 5 percent in particular due to the strength of some sectors of China's agricultural sector.

²⁴ Source: *Working Party Report*, WTO, 2001.

²⁵ Source: *Nouvelle venue au sein de l'OMC, la Chine n'a pas préparé ses paysans à ce choc*, La Liberté, 19.11.01

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Source: G. Jonhson, *China's agriculture and WTO accession*, La Liberté, 19.11.01

³⁰ These products include for imports: grain, vegetable oil, sugar, tobacco, crude oil, processed oil, chemical fertilizer and cotton; for exports: tea, rice, corn, soy bean, 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, silver. Source: Annex 2A1 and 2A2, *Working Party Report*, WTO, 2001.

³¹ For this schedule, see Annex 3, *Working Party Report*, WTO, 2001.

³² China has over 120 car producers; to compete in the future, they will have to bring their costs down by 40 percent. Source: *Country Economic Review: People's Republic of China*, Asian Development Bank, October 2000.

³³ Schedule of Specific Commitments on Services, Financial services, footnote nr. 8: „Any further authorization provided to foreign insurers after accession under more favorable conditions than those contained in this schedule (including the extension of grandfathered investments through branching, sub-branching or any other legal form), will be made available to other foreign service suppliers which so requested“. This footnote results from the EU/ China bilateral negotiations and was therefore included in China 's final Schedule on Services.

³⁴ Source: Asian Development Bank, op.cit.

³⁵ Source: China Daily, October 29, 2002

³⁶ Agreements were signed respectively in 1992, 1995 and 1996. Source: US Chamber of Commerce, op.cit., p. 20.

³⁷ For a detailed section on trade-related intellectual property rights, see *Working Party Report*, WTO, 2001, pp. 48-63.

³⁸ *Wang Jingchuan speaks frankly on four problems facing China's patent work*, Financial Times, 26.12.2001.

³⁹ This refers to Title I, Sec. 103 of the US Congress PNTR legislation: Relief from market disruption including Chapter 2: relief from market disruption to industries and diversion of trade to the United States market (Sec. 421: actions to address market disruption).

⁴⁰ This refers to Title IV, Sec. 401 of the US Congress PNTR legislation: Review within the WTO.

⁴¹ The elimination of all textiles and clothing quotas by January 1, 2005 was one of the major results of the Uruguay Round and is prescribed in the WTO Agreement on Textiles and Clothing.

⁴² Source: E. Lanchovichina, W. Martin, E. Fukase, *Assessing the Implications of Merchandises Trade Liberalization in Chinas's Accession to WTO*, World Bank (mimeo), 2000.

⁴³ The most recent case of invoking this Agreement refers to the measures taken by the United States on March 20, 2002 in the steel sector.

⁴⁴ Source: Kyodo News International, October 29, 2002.

⁴⁵ These precise terms were used by China in the *Working Party Report*, WTO, 2001.

⁴⁷ *First Steps: A US Chamber of Commerce Report on China's WTO Progress*, US Chamber of Commerce, September 2002.

⁴⁸ Ibid.

⁴⁹ AQSIQ: State General Administration for Quality Supervision and Quarantine.

⁵⁰ The list was published by MOFTEC and the Customs General Administration, announcement, No. 2000/17

⁵¹ Art. 2.7 of the TBT Agreement states that „Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations,.. For the corresponding China commitment, see § 184, *Working Party Report*, 2001.

⁵² For example between the China National Accreditation Administration in charge of delivering the CCC mark and the Ministry of Information Industry, the Ministry of Health or the State Drug Administration.

⁵³ Law of the People's Republic of China on Chinese – Foreign Contractual Joint Venture, art. 20 Law of the People's Republic of China on Foreign – Investment Enterprises, art. 18.3

⁵⁴ Law of the People's Republic of China on Chinese – Foreign Equity Joint Venture, art. 9 Law of the People's Republic of China on Wholly Foreign Owned Enterprises, art. 15

- ⁵⁵ Law of the People's Republic of China Wholly Foreign Owned Enterprises, art. 3.1
- ⁵⁶ Law of the People's Republic of China on Chinese Foreign Equity Joint Venture, art. 6
- ⁵⁷ Provisions for Guiding Foreign Investment Direction and Industrial Catalogue for Foreign Investment, April 1, 2002.
- ⁵⁸ Implementing rules of the Regulation on Administration of Foreign Financial Institutions, 29 January 2002.
- ⁵⁹ In paragraph 308 of the Working Party Report, China undertook to ensure that «*China's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary*» and that «*if an application was terminated or denied, the applicant would have the possibility of resubmitting a new application at his discretion that addressed the reasons for termination or denial*».
- ⁶⁰ Source: US Chamber of Commerce, op.cit., p. 24.
- ⁶¹ For these obligations, see § 308, *Working Party Report*, WTO, 2001.
- ⁶² For these commitments, see § 312, *Working Party Report*, WTO, 2001.
- ⁶³ The minimum registered capital for a joint venture or a wholly foreign-owned insurance company is CNY 200 million; in addition, foreign-invested insurer must have CNY 100 million in registered capital for each subsequent branch; beyond 4 branches, additional registered capital per branch is CNY 50 million up to a total of CNY 1.5 bn (1 US \$ = 8.28 CNY) for a national licence.
- ⁶⁴ Art. 1.1 and 1.2 of Annex 1, Reference Paper Part 2.C of China's Schedule of Specific commitments on Services.
- ⁶⁵ China's Schedule of Specific Commitments on Services: parts 4 B and C.
- ⁶⁶ The Experimental Regulations of Foreign Invested Commercial Enterprises, June 25, 1999.
- ⁶⁷ Non-financial institutions must have total assets of 8 bn yuan (1 US \$=8.28 CNY); net assets at the end of the year must be at least 30 percent of total assets; total investments must not exceed 50 percent of net assets and the company must have made profits in the past three years. Equity capital of the auto-financing company must be at least CNY 500 million (Mexico: US \$ 2 million). Responses to applications must be provided by the Central Bank within six months, and if rejected, a new application cannot be filed

- within a year. Source: *China takes step Toward Auto-Financing With Draft Rules*, Dow Jones International News Service, October 8, 2002.
- ⁶⁸ Administrative Regulation on Travel Agencies, Art. 30.
- ⁶⁹ Administrative Measures on Foreign Enterprises Investing in Road Transport Services, Art. 6.
- ⁷⁰ Notification Regarding Administration of Delivery Letters and Letter-Like Objects Going Inwards Outwards Across China's Border; Department of Information Industry; MOFTEC, Bureau of National Post Office, December 2001.
- ⁷¹ Source: US Chamber of Commerce, op. cit., p. 20
- ⁷² Counterfeiting refers to the apposition of a trademark on a product without any right.
- ⁷³ Piracy refers to the illegal production of a trademark good without the consent of the owner of the author's, design's or registered model's rights.
- ⁷⁴ Source: data provided by the European Union.
- ⁷⁵ Source: Government of China.
- ⁷⁶ Source: Government of China.
- ⁷⁷ Source: US Chamber of Commerce, all items except watches and leather products, op.cit., p. 6.
- ⁷⁸ Data for other Asian countries was: South Korea (136 actions, 163 components, 6252 watches), Taiwan (93 actions, 26'292 components , 7'449 watches) and Thailand (401 actions , 3'619 components, 30'995 watches). Source: Fédération de l'Industrie Horlogère Suisse, *Rapport d'activité 2001*, p. 24.
- ⁷⁹ Source: B. Murray, op.cit.
- ⁸⁰ Source: B. Murray, „*China's prospects*„, op.cit.

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Europainstitut der Universität Basel, Gellertstrasse 27, CH-4020 Basel, Schweiz,
Tel. ++41 (0) 61 317 97 67, FAX ++41 (0) 61 317 97 66
E-mail: europa@unibas.ch, Internet: www.europa.unibas.ch

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