

Trade, Investment and Beyond: The Impact of WTO Accession on China's Legal System

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ABSTRACT This article assesses the impact of China's accession to the World Trade Organization on its foreign trade and investment regime. While the government had begun liberalizing the Chinese economy long before joining the WTO, the accession induced regulatory, institutional and normative changes that have transformed the landscape of trade and investment in China. The profound impact of the WTO stems directly from the extensive commercial and rule commitments China undertook in its accession. Focusing on the most significant of these commitments, the article examines their implications for Chinese constitutional law and their effect on the regulation of foreign trade, foreign investment, intellectual property rights and domestic governance. Additionally, it looks at the impact of WTO disputes on Chinese law and practice. It concludes that China's accession has made its foreign trade and investment regime far more liberalized and less opaque than a decade ago. More importantly, the accession has institutionalized the process of China's domestic reform externally through the force of WTO obligations. Although much uncertainty remains concerning the future direction of government policies, WTO membership ensures that the course of China's economic development will be charted within the disciplines of the WTO system.

China's foreign trade and investment regime has changed profoundly in the past decade. It is today far more liberalized and less opaque. Much of the progress occurred as a result of China's accession to the World Trade Organization (WTO), which, after 15 years in the making, finally took place on 11 December 2001. In its accession agreement (the Protocol), China made extensive commitments to lower its trade and investment barriers, deepen economic reforms, and improve its domestic governance, many of which exceeded the requirements of the WTO agreements.¹ To implement these commitments,

1 *Protocol on the Accession of the People's Republic of China*, WT/L/432 (10 November 2001), which incorporates by reference selected paragraphs of *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) (WPR). For WTO agreements see: Agreement Establishing the WTO (15 April 1994) and its annexes, including the General Agreement on Tariffs and Trade 1994 (GATT) and its related agreements, the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the agreements on dispute settlement and trade policy review.

China has conducted a legislative overhaul: thousands of laws and regulations relating to WTO matters have been scrutinized, revised or repealed. Meanwhile, the central government has gradually shifted its role in the economy from exerting direct control to being a regulator in the marketplace. Moreover, WTO norms, such as market economy, nondiscrimination and transparency, have gained wide acceptance among the Chinese public. These regulatory, institutional and normative changes brought about by the WTO accession have transformed the landscape of trade and investment in China.

Corresponding to these changes, China's foreign trade and investment has grown tremendously. From 1996 to 2005, foreign trade increased nearly fivefold, with more than three-quarters of that growth taking place after WTO accession.² During the same period, China became one of the top destinations for foreign direct investment (FDI). The FDI inflow since 2001 accounted for more than one-third of the total amount of actually utilized foreign investment since 1979.³ This FDI expansion has in turn fuelled external trade, as nearly 60 per cent of China's imports and exports have been conducted by foreign-invested companies.⁴

Meanwhile, an increasingly globalized Chinese economy has created new issues. The rapid economic growth powered by foreign trade and investment has been at the cost of severe environmental degradation and widening income disparities. As the government rebalances its development policy, it has heightened state intervention in the economy. With foreign competition intensifying in the Chinese market, protectionism and economic nationalism arise. There are signs that the government is tightening control over foreign businesses and dragging its feet in implementing some of the more difficult WTO commitments. It seems uncertain, therefore, whether China will progressively liberalize its trade and investment regime in the post-accession era.

China pursued WTO membership because it was consistent with its domestic reform agenda. For more than two decades before WTO accession, China had engaged in economic liberalization unilaterally. A primary reason for Chinese leaders to accept the many onerous obligations of WTO membership was so they could use external pressures to overcome domestic obstacles in furthering the reform. In the grand scheme of China's development strategy, therefore, WTO accession was only one step, albeit a critical one, in the reform process. And China's reform agenda is much broader than that called for by its WTO commitments.

Nevertheless, WTO accession marks the formal integration of China into the global trading system. The accession has institutionalized China's systemic reforms through the force of international legal obligations. Since joining the WTO, whether China stays on the course of reform and how it chooses to

2 The total value of China's imports and exports was \$289.9 billion in 1996, \$509.5 billion in 2001 and \$1,422.1 billion in 2005 (China National Bureau of Statistics).

3 WTO Trade Policy Review, *Report by the People's Republic of China*, WT/TPR/G/161 (17 March 2006), paras. 3 and 4.

4 WTO Trade Policy Review, *Report by the Secretariat – People's Republic of China*, WT/TPR/S/161/Rev.1 (26 June 2006) (TPR Report), p. 2, n. 7.

pursue its economic development is no longer purely a domestic policy matter; instead, it has become a matter subject to the scrutiny of the WTO. While in theory China can always break away from the WTO or in practice find ways to evade its WTO commitments, it cannot do so without incurring considerable political and economic costs. It is in this sense that WTO membership performs a constitutional function for its members.⁵

This article assesses the impact of WTO accession on China's legal system. It introduces the nature and scope of China's WTO commitments, examines their constitutional implications, and surveys the major changes they have brought about in the regulation of foreign trade, foreign investment, intellectual property rights and domestic governance. It then discusses the impact of WTO disputes on China law and practice. The article concludes with some thoughts on the future prospects of China and the WTO.

Nature and Scope of China's WTO Commitments

The WTO represents a liberal trading system that aims to increase the welfare of nations by reducing government restrictions on trade. WTO jurisdiction extends to trade in goods and services, trade-related investment, and intellectual property. It prescribes two types of obligations for its members: market access obligations, which are commitments by each member to open up domestic markets to goods and services produced by other members; and rule obligations, which are rules of conduct for international trade. Market access commitments vary from member to member and can be renegotiated periodically. Rules of conduct, on the other hand, are uniform and cannot be changed easily. These rules cover not only border measures, such as customs tariffs and import restrictions, but also internal measures affecting trade, such as domestic taxation and regulation, health and technical standards, government subsidies, investment requirements, and intellectual property protection. All WTO obligations are enforceable through the WTO dispute settlement mechanism, which features compulsory jurisdiction and binding decisions. Failure to implement dispute settlement rulings may lead to trade sanctions authorized by the WTO. The WTO also monitors its members' trade practices through notification requirements and trade policy reviews.

As an acceding member, China must make market access commitments of its own and accept all WTO rules of conduct. In terms of market access, the scope and depth of China's commitments is unprecedented in WTO history. For instance, China agreed to bind all tariffs at low statutory rates, a commitment few countries ever made⁶; and its commitments in service sectors are much more

5 This constitutional function of the world trading system is commonly understood. See generally, Frieder Roessler, "The constitutional function of the multilateral trade order," in *Essays on the Legal Structure, Functions & Limits of the World Trade Order* (London: Cameron May, 2000), pp. 109–53. See also "Ten benefits of the WTO trading system," at www.wto.org.

6 Nicholas R. Lardy, *Integrating China into the Global Economy* (Washington, DC: Brookings Institution Press, 2002), p. 79.

extensive than those offered by any other group of countries, including high income ones.⁷ This level of trade liberalization is particularly remarkable considering that China is still a developing country.⁸ Even more remarkable, however, is the fact that China accepted a whole set of special rule obligations in addition to the generally applicable WTO rules.⁹ These China-specific rules fall into two categories. The first prescribes obligations that exceed the requirements of generally applicable WTO rules. These “WTO-plus” obligations address primarily matters concerning market economy conditions, foreign investment and domestic governance. The second category authorizes discriminatory treatment of Chinese exports. These “WTO-minus” provisions permit an importing member to lower WTO standards in applying trade remedies (antidumping, anti-subsidy and safeguard measures) against Chinese products. While some of the WTO-minus rules have built-in expiry dates, all WTO-plus provisions are permanent. Additionally, China agreed to forgo much of the special treatment the WTO grants to its developing country members.

All the market access and rule obligations undertaken by China are enforceable through the WTO dispute settlement mechanism. In addition, a special transitional review mechanism was set up to monitor China’s compliance with its extensive commitments. Under this, annual review of China’s practice is conducted during the first eight years of its accession, followed by a final review before the end of the tenth year. No other member is subject to such special surveillance within the WTO.

In sum, China has undertaken extraordinary obligations exceeding those of any other WTO member. In fact, the Protocol is the first treaty of the People’s Republic that contains explicit discriminatory terms. But why was the Chinese government willing to take on such onerous burdens? The question seems even more puzzling considering that most of China’s exports already enjoyed WTO tariff rates by virtue of the most-favoured-nation treatment clause contained in its bilateral agreements with all major trading partners.¹⁰ While the motives of Chinese leaders may never be fully known, one thing has become clear: they

7 Aaditya Mattoo, “China’s accession to the WTO: the service dimension,” *Journal of International Economic Law*, Vol. 6, No. 2 (2003), pp. 299–339, at 302–04.

8 Developing countries typically maintain a relatively high level of trade barriers to protect their domestic industries from foreign competition. For instance, the average statutory tariffs on industrial products in Argentina, Brazil, India and Indonesia are respectively 30.9%, 27%, 32.4% and 36.9%, as compared with 8.9% set by China. Lardy, *Integrating China into the Global Economy*, pp. 79–80. For a comparison in the coverage of services commitments between high-income, low and middle-income countries, large developing countries and China, see Mattoo, “China’s accession to the WTO,” p. 303, Table 1.

9 See generally, Julia Ya Qin, “‘WTO-plus’ obligations and their implications for the WTO legal system – an appraisal of the China accession Protocol,” *Journal of World Trade*, Vol. 37, No. 3 (2003), pp. 483–522.

10 China could expect two major improvements in market access from WTO accession. One was to secure permanent MFN treatment by the US, which had been subjecting China’s MFN status to annual Congressional approval. The other was in textile trade, where the decades-old global quota system was scheduled to be replaced by a tariff-based system for all WTO members at the end of 2004, which would benefit more competitive textile exporters such as China. But the discriminatory textile safeguard put a limit on the expansion of China textile exports. See n. 24 and text.

intended to utilize external forces – the enhanced foreign competition inherent in market access commitments and the multilateral disciplines imposed by the WTO – to transform the ailing state sector in the economy.¹¹ In order to achieve this strategic objective, the government was willing to accept certain discriminatory and unfair treatment as part of the cost. In other words, WTO accession was, first and foremost, a strategic decision on the part of the leadership to further liberalize China's economy. The tremendous growth in trade and investment following the accession is the direct result of such liberalization. This essential character of China's WTO accession is not always well understood.

Impact of WTO Accession on the Chinese Legal System

The WTO is the first international organization China joined that is vested with the authority to police a wide range of domestic policies of its members. It is also the first international organization China joined whose dispute settlement mechanism has compulsory jurisdiction over all its members. WTO accession, therefore, presents many new challenges to the Chinese system.

A basic issue encountered by the Chinese system, for example, is the domestic legal effect of the WTO agreements. The PRC Constitution is silent about the status of treaties under Chinese law and whether an international agreement can be directly applied in China without enabling domestic legislation. The issue had not commended much attention previously because no prior treaty contained such a large number of obligations requiring domestic implementation. After much debate, a consensus has emerged: the WTO agreements will not be applied in China directly; instead they must be implemented through domestic legislation.¹²

Constitutional Implications

A number of “WTO-plus” obligations undertaken by China bear directly upon the fundamental aspects of its economic system and are therefore constitutionally significant. They include the commitments, first, to let market forces determine prices of all goods and services except for a few specified categories such as tobacco, pharmaceuticals and public utilities; secondly, to allow any Chinese or foreign entity to engage in the import-export business within three years of accession, and to limit state trading to a list of specified products; and thirdly, not to influence, directly or indirectly, commercial decisions of state-owned enterprises (SOEs) except in a manner consistent with the WTO agreements.

11 For an insightful analysis, see Lardy, *Integrating China into the Global Economy*, pp. 9–21.

12 This view has been confirmed by the Supreme People's Court. See *Guanyu shenli guojimaoyi xingzheng anjian ruoganweni de guiding (Provisions on Several Issues concerning the Adjudication of Administrative Cases Relating to International Trade)*, 27 August 2002, effective 1 October 2002. For a detailed analysis, see Donald C. Clarke, “China's legal system and the WTO: the prospects for compliance,” *Washington University Global Studies Law Review*, Vol. 2 (2003), pp. 99–104.

These “market economy” commitments went beyond the requirements of the then-existing Chinese law. For instance, the Price Law of 1997 merely declared that the state should gradually move to a market-based pricing system. While in practice most price controls were removed before WTO accession, the government is not required by domestic law to refrain from price-setting. Similarly, although the Constitution recognizes the right of SOEs to autonomous management, it does not impose any obligation on the government to refrain from interfering with SOE operations. As for trading rights, under the Foreign Trade Law of 1994, the government still controlled the allocation of all rights to conduct imports and exports. It was the WTO commitment that has finally rid China of this legacy of a centrally-planned economy.

Furthermore, these “market economy” commitments cannot be altered by China unilaterally, whereas Chinese domestic legislation including the Constitution can be, and has been, revised from time to time. So long as China remains a member of the WTO, it may not negate these commitments without incurring the consequences of breaching WTO obligations.¹³ In effect, therefore, China has committed itself to a particular economic system – a matter of constitutional importance – through the force of WTO law.¹⁴

Foreign Trade Law

In the past decade, liberalization and making China’s foreign trade regime WTO-compliant has been the main theme in the development of foreign trade law. During this period, China reduced its tariff and non-tariff barriers across the board and opened up important service sectors to foreign competition. Institutionally, the government has gradually moved away from direct control over trade and increasingly assumed the role of a regulator. Major legislation governing trade, including the Foreign Trade Law, the Customs Law, and laws and regulations on technical and safety standards, intellectual property and administrative procedures, has all been revised to ensure WTO consistency.¹⁵ Consequently, China’s foreign trade regime today is considerably more liberal than that of other major developing countries. However, recent years have also seen a rise in protectionism, reflected mostly in China’s extensive use of trade remedy and other non-tariff measures.

13 In fact, one of these market economy commitments – liberalization of trading rights – has become the subject of a WTO complaint. See n. 52.

14 Although its rules are premised upon market economy assumptions, the WTO does not prescribe any particular economic system for its members, which is consistent with the principle that sovereign nations may freely choose their own political and economic system. Since other members have not undertaken such systemic obligations, they may, at least as a formal matter, change their economic regime without breaching WTO obligations.

15 For a list of Chinese legislation relating to foreign trade, see TPR Report, Appendix, Table A.II.2. For a general study of China’s foreign trade regulation, see Xin Zhang, *International Trade Regulation in China* (Hart Publishing, 2006).

Trading rights

To implement its WTO commitment on liberalization of trading rights, China amended the Foreign Trade Law of 1994, which took effect on 1 July 2004, six months ahead of schedule. The amendment replaces the previous approval system with a registration system for operating import-export businesses in China. Under this new scheme, any firm or individual (domestic or foreign) wishing to engage in imports and exports of goods or technologies may do so upon completing certain registration procedures with the Ministry of Commerce (MOFCOM). Documents required for registration are mostly for identification purposes, and MOFCOM must complete the registration within five days of receipt of the required documents. This new system is a primary example that the government has shifted its role from direct control over foreign trade operations to functioning as a regulator in the marketplace. The liberalization of trading rights works hand-in-hand with the opening of domestic distribution sectors to foreign investment, as discussed below.

Tariffs, quotas and state trading

China has substantially reduced its tariff and non-tariff barriers over the last decade. Pursuant to its WTO commitments, all tariffs are now bound at newly lowered statutory rates. As of 2005, the average applied most-favoured-nation rate for imports was 9.7 per cent, compared to 39.5 per cent in 1994.¹⁶ Before WTO accession, China used quotas and licences extensively to restrict trade flow. Following accession, import quotas are abolished and the number of tariff lines subject to licences is cut by half.¹⁷ While state trading activities remain, their operations have become much more transparent: all goods subject to state trading are listed in the Protocol; the adjustments of that list and the firms authorized to trade in those goods are published by MOFCOM and notified to the WTO.

Technical standards

One area where non-tariff barriers may have risen in China, however, is the use of technical and health standards. While these standards are meant to ensure product quality and to protect health or environment, they can also be used to restrict imports and exports. The WTO, therefore, has detailed rules on standards, requiring that domestic technical and health regulations not be more trade-restrictive than necessary to fulfil a legitimate objective and not be applied arbitrarily or discriminatorily. To that end, WTO members are obliged to use relevant and available international standards as the basis for their national standards. Although China has revised relevant laws and regulations to ensure WTO consistency, its practice in setting and applying standards has become an

16 See TPR Report, pp. 4 and 277, Table AIII.1.

17 *Ibid.* pp. 77–79.

increasing concern for its trading partners. At present, a majority of the Chinese standards are not based on international standards.¹⁸ And traders have complained about a variety of unnecessary and burdensome procedures for product registration, licensing and certification that effectively hinder imports and exports.

Moreover, China has attempted in recent years to develop its own unique standards in areas where internationally recognized standards already exist, a well-known example of which is the Chinese WAPI security standard for wireless LAN.¹⁹ Such attempts raise the issue of consistency with WTO requirements and are viewed as a strategy to benefit Chinese domestic industries at the expense of their foreign competitors.

Trade remedies

Trade remedies refer to antidumping, anti-subsidy and safeguard measures used by an importing country to remedy injuries caused by imports to its domestic industries. Dumping (selling below normal value) and certain government subsidies are considered “unfair” trade practices, and a WTO member may levy antidumping and countervailing duties on dumped and subsidized imports respectively if they are found to cause or threaten material injury to a domestic industry. A member may also take safeguard measures (tariffs and quotas) against imports when there is a sudden surge in imports that causes or threatens serious injury to domestic producers, even when no “unfair” trade practice is involved. Because these remedies raise trade barriers and can easily be abused by protectionist forces, the WTO imposes strict disciplines on their use. WTO trade remedy rules are extremely complex, and complaints about violations constitute a large number of WTO disputes.

The past decade witnessed the establishment of a trade remedy regime in China. The first Chinese antidumping and anti-subsidy regulation was issued in 1997 (superseded by two separate regulations on antidumping and anti-subsidy measures in 2001), and the first safeguard regulation in 2001. These regulations generally follow WTO standards, but contain much less detail than WTO provisions. MOFCOM is designated as the chief regulatory authority for conducting all relevant investigations and making determinations on trade remedies. Despite its nascent trade remedy regime, China has quickly risen to be one of the top users of antidumping measures in the world.²⁰ Japan, South

18 As of 2004, only 32% of the 21,342 national standards were equivalent to international standards. For the numerous sectoral, local and enterprise standards used in China, no data on their conformity with international standards is available. TPR Report, p. 90. Direct comparison with practices of other countries, however, is difficult. The US, for example, does not maintain centralized statistics on the extent to which its technical regulations conform with international standards. About two-thirds of the standards developed at the EU level were reportedly based on international standards. WT/TPR/S/136 (23 June 2004), p. 60.

19 See Scott Kennedy, “The political economy of standards coalitions: explaining China’s involvement in high-tech standards wars,” *Asia Policy*, No. 2 (2006), pp. 41–62.

20 During the first four years of WTO accession, China initiated 103 antidumping investigations and took final measures in 68 cases, which made it the third largest antidumping user after India and the United States (WTO Antidumping Statistics).

Korea, the United States and the European Union are among the most frequent targets of China's antidumping investigations. It is however notable that foreign respondents won a partial or complete victory in more than 40 per cent of the concluded cases.²¹ To date, China has used safeguard measures only once, and has not initiated any anti-subsidy investigation.

China's aggressive use of antidumping measures is not surprising. Typically, when tariff and non-tariff barriers are significantly lowered, domestic industries will seek protection through more frequent resort to trade remedies. Besides, China's own experience as the "victim" of discriminatory trade remedies has unavoidably affected its position. For years, China has been by far the most frequently targeted country in antidumping actions.²² The designation of China as a non-market economy by the United States, the EU and certain other countries has made it easier for them to find dumping by Chinese producers and impose high antidumping duties on Chinese products.²³ WTO accession did not end this practice; instead, the Protocol permits WTO members to treat China as a non-market economy till December 2016 for antidumping purposes, and indefinitely for anti-subsidy purposes. Furthermore, contrary to the WTO principle on non-discriminatory application of safeguards, the Protocol allows an importing member to single out Chinese products for safeguard measures. The China-only safeguards consist of two kinds: the general one may be used against any Chinese products till December 2013; the specific one against Chinese textile products till the end of 2008. Both kinds have been utilized in practice.²⁴ Such discriminatory treatment cannot help but motivate China to pursue its own trade remedies aggressively.

Foreign Investment Law

WTO accession provided a spur to foreign investment in China – the FDI inflow between 2001 and 2005 accounted for more than one-third of the total utilized foreign investment since 1979. This major expansion in foreign investment has in turn contributed to a tremendous growth in foreign trade. Since WTO accession, China's foreign trade has more than doubled in value, of which nearly 60 per cent is attributable to imports and exports by foreign-invested enterprises (FIEs).²⁵ Given that the WTO agreements provide only limited disciplines on

21 For an excellent analysis of the dynamics in China's antidumping practice, see Scott Kennedy, "China's porous protectionism: the changing political economy of trade policy," *Political Science Quarterly*, Vol. 120, No. 3 (2005), pp. 407–32.

22 From 1995 to 2005, WTO members initiated a total of 2,840 antidumping investigations, of which 469 involved Chinese products; of the 1,804 final measures taken by the members during this period, 338 were against Chinese products (WTO Antidumping Statistics).

23 See Chad Bown and Rachel McCulloch, "US trade policy toward China: discrimination and its implications" (June 2005), <http://ssrn.com/abstract=757124>, for a comparison between antidumping duties facing China and those facing all other countries involved in the same investigations in the US.

24 More than a dozen proceedings have been initiated against China under the special safeguard provision by the US, Canada, India, Colombia, Peru, Ecuador, Turkey and Chinese Taipei. The special textile safeguards have been invoked by the US, EU, Argentina and Turkey, following the expiration of the global quota system in textile trade at the end of 2004.

25 See n. 4.

investment activities, the impact of the WTO on foreign investment in China stems mostly from its accession commitments – particularly its extensive market-access commitments in service sectors, unique rule commitments on treatment of FIEs, and special pledges on market economy practices and domestic governance, which boost the confidence of business in the overall investment environment in China.

Against this backdrop, however, there are signs of a new trend of tightened government controls over foreign investment along with protection of domestic industries. Some of the new regulations and measures taken by the government call into question China's compliance with its WTO commitments, while others raise issues that cannot be easily addressed by WTO rules.

Easing entry restrictions

Ever since China opened up to foreign investment in 1979, the government has maintained control over the entry of foreign capital through an elaborate examination and approval system. For more than a decade, foreign investment projects have been classified by sector into the categories of encouraged, permitted, restricted and prohibited. The sectoral restrictions imposed include straight bans, equity limits and various other conditions on investment. The government maintains the Industry Guidance Catalogue for Foreign Investment, which provides a detailed list of specific industries under each category. The Catalogue has been substantially revised following WTO accession. The number of encouraged industries has increased from 186 to 262, while restricted industries decreased from 112 to 75. About 75 per cent of foreign investment in China is now in wholly foreign-owned companies.

It should be noted that market access for foreign capital is not subject to WTO rules except to the extent covered by the General Agreement on Trade in Services (GATS). Under GATS, members negotiate market access commitments in services, which include services supplied through the “commercial presence” of foreign service suppliers in their territories (that is, foreign investment in service sectors).²⁶ Once a member makes a commitment in a particular service sector, it is obliged to provide national treatment to the service suppliers in that sector from other members, subject only to the conditions specified in its service schedule attached to GATS. The scope and terms of market access for foreign investment in service sectors, therefore, vary from member to member.

As previously noted, China made extraordinary market access commitments in services. Of the 12 service sectors classified under GATS, China is bound by specific commitments in nine, including crucial areas in distribution, construction, transport, communication and financial services.²⁷ Take the opening of the

²⁶ GATS covers trade in services supplied in four different “modes,” of which mode 3 is “commercial presence.”

²⁷ No commitment was made in health related and social services, and recreational, cultural and sporting services.

distribution sector as an example. Previously, FIEs were not permitted to sell products in China other than those of their own production, and FDI in retail business was strictly restricted. After accession, the distribution sector has been liberalized according to a specified timetable. Today, FIEs can engage in wholesale and retail of all kinds of products, without limitation on the percentage of ownership or geographical location. Distribution rights, which work hand-in-hand with trading rights, are arguably the most important gains for foreign producers, as most of them are interested in selling directly into the vast Chinese market. Another critical area of liberalization is banking services. To stimulate its ailing state-owned banking sector, China made a bold commitment to allow foreign banks to operate fully in its territory – without geographic, client or ownership restrictions – within five years of accession. The ongoing implementation of this commitment may result in profound changes in domestic finance in China.²⁸

It is worth mentioning that China also made several commitments regarding FDI in the automobile industry, including the removal upon accession of the 50 per cent foreign equity limit for joint ventures manufacturing motor vehicle engines.²⁹ China's car industry commitments are unique, as WTO members are not required to make market access commitments on investment in non-service sectors.

Eliminating performance requirements

Apart from GATS, the WTO has only a narrow set of rules regulating investment activities. Under the Agreement on Trade-Related Investment Measures (TRIMs), WTO members must eliminate certain performance requirements imposed on investment, including those relating to export performance, local content (import substitution) and foreign exchange balancing. These performance requirements are prohibited because of their distorting effect on trade in goods.

Before WTO accession, China imposed many performance requirements on FIEs of the kind prohibited by the TRIMs. In the Protocol, China promised that it would, upon accession, comply with the TRIMs without recourse to the transitional period available to developing country members. Remarkably, China also pledged not to condition approval of foreign investment on “performance requirements of any kind,” including not only those covered by TRIMs but also “the transfer of technology” and “the conduct of research and development in China.” This commitment to abolish any and all performance requirements is one of the WTO-plus obligations that no other country has undertaken.

28 China issued a new regulation in November 2006 to implement this commitment, which requires that foreign banks establish Chinese subsidiaries, instead of operating as foreign branches, in order to engage in the full range of RMB business with local clients.

29 WPR, paras. 204–07. See generally Eric Harwit, “The impact of WTO membership on the automobile industry in China,” *The China Quarterly*, No. 167 (2001), pp. 655–70.

To implement these commitments, China has revised foreign investment laws to eliminate all mandatory performance requirements for FIEs. In addition, it has reduced control over cross-border technology transfers. The previous system requiring government approval of every technology transfer agreement has been replaced with a system under which approval is required only of those transfers involving a prohibited or restricted technology identified by a government catalogue. Despite these reforms, however, China has not eliminated all performance requirements in practice. For instance, the 2004 automobile industry development policy issued by the National Development and Reform Commission requires newly established automobile enterprises to set up their own research and development institutions. And tax benefits and other incentives are still offered to FIEs and domestic enterprises contingent upon the use of domestic over imported equipment. Such measures have given rise to challenges at the WTO as discussed below.

National treatment

WTO accession has significantly expanded China's obligations to accord national treatment to foreign investment. Traditionally, China grants national treatment only to foreign investors of selected countries through bilateral investment treaties, and the scope of the national treatment clause in those treaties is typically limited to the protection of investment against expropriation or nationalization.³⁰ While the accession protocol does not require China to extend all-around national treatment to foreign investors, it enlarges the traditional scope considerably by requiring that foreign investors be given national treatment with respect to China's market access commitments in services, the right to engage in the import-export business, and the conditions affecting FIEs' production and sales in China, such as the prices and availability of public utilities and other factors of production. The latter two aspects go beyond the scope of WTO national treatment provisions and are therefore special WTO-plus obligations for China.

Interestingly, China's WTO-plus obligations on national treatment of foreign investors has led to a demand for "national treatment" (or more precisely, equal treatment) of *domestic* enterprises. Historically, China has maintained different treatment between foreign and domestic enterprises, and between state-owned and private enterprises. To attract foreign investment, the government has provided FIEs with substantial tax benefits and other privileges that are not available to domestic enterprises. On the other hand, SOEs traditionally enjoyed more favourable treatment than FIEs and domestic private enterprises with respect to market access, performance requirements, supply of production inputs and state bank credits. With China's entry into the WTO, FIEs have

³⁰ Of the more than 100 bilateral investment protection agreements of China, only a minority contain a national treatment clause. Historically, China preferred the "fair and just treatment" standard to the "national treatment" standard in dealing with foreign interests.

gained national treatment in new areas, whereas SOEs have lost many of their privileges, and domestic private enterprises, which are fast growing in number, continue to receive less favourable treatment than both FIEs and SOEs in terms of market access, bank financing and access to capital markets.

Under WTO national treatment provisions, China is obliged only to accord foreign interests treatment “no less favourable” than that accorded to domestic interests, and is therefore not prohibited from providing preferential treatment to foreign interests.³¹ Nevertheless, publicity about the national treatment principle of the WTO has made the Chinese public keenly aware of the issue of unequal treatment of enterprises in China. There have been increasing calls to remove FIE preferences and to level the playing field for all players in the economy. In March 2007, the National People’s Congress adopted the new Enterprise Income Tax Law that provides for a uniform income tax system for domestic and foreign-invested enterprises. Once fully implemented, the new law will end the decades-long preferential tax treatment of FIEs.

Rise of protectionism

In recent years, there has been a growing perception in China that decades of economic reform and opening up have benefited foreign interests more than domestic ones. Critics have sounded an alarm that foreign investors have bought out name-brand Chinese companies or acquired valuable Chinese assets at bargain prices, leading to foreign domination in industries and the disappearance of domestic brands. They also claim that foreign investment has not resulted in significant technology transfers to China and instead has diverted Chinese domestic resources from research and development to low-end manufacturing sectors.

Partially responding to these concerns, the government began to readjust its foreign investment policy in 2006. Recent months have seen a host of new regulations and policies that aim to tighten controls over foreign investment and to promote domestic industries. For example, a new regulation in August 2006 provides MOFCOM with broad discretion to block foreign acquisition of domestic companies involved in a “key industry,” holding famous Chinese brands or otherwise affecting “national economic security.”³² In November 2006, the National Development and Reform Commission issued an important policy document outlining the foreign investment plan for the next five years.³³ While affirming that China will continue to open up service sectors and improve the business environment for foreign investment, the document indicates that

31 While preferential treatment of FIEs is well within the perimeter of WTO national treatment provisions, FDI incentives provided by China have been challenged as inconsistent with WTO subsidy rules. See n. 50.

32 See *Guanyu waiguo touzizhe bingou jingnei qiye de guiding (Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors)*, jointly issued by MOFCOM and five other central government agencies, 8 August 2006, effective 6 September 2006.

33 NDRC, *Liyong waizi “shiyi wu” guihua (The 11th Five-Year Plan for Utilizing Foreign Investment)*, November 2006.

China will focus on the quality rather than the quantity of FDI, and select new investments that will bring technology or otherwise fit into China's development strategy. These new policies and rules have already made a difference in practice, holding up a number of foreign acquisitions.³⁴

After nearly 30 years of encouraging foreign direct investment, China is entering a stage where it no longer needs to rely on foreign capital to generate growth and employment. Against this economic reality, the tightening of government control over FDI, while evidently a response to a variety of concerns,³⁵ may signal the rise of a protectionist trend. It remains to be seen to what extent China's WTO commitments can serve as a check on this trend.

Intellectual Property Rights

The development of intellectual property (IP) rights in China has been closely related to the development of foreign trade and investment. Since adopting the Trademark Law in 1982, China has enacted numerous IP laws and regulations, and acceded to most of the major IP treaties.³⁶ In building up China's IP regime, WTO accession has played an important role.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides a comprehensive legal framework for the protection of IP rights. It does so by incorporating the principles and rules of other major IP conventions, setting out minimum standards on substantive IP rights, and prescribing certain civil, administrative and criminal procedures and remedies that WTO members must adopt into their domestic legislation.

To ensure compliance with TRIPS, China has made great efforts on both the legislative and institutional fronts. Legislatively, new amendments have been made to all major IP laws, including the Patent Law (2000), the Trademark Law (2001) and the Copyright Law (2001), and new regulations have been issued on the protection of computer software (2001), layout-designs of integrated circuits (2001) and new plant varieties (2001). In addition to administrative and civil remedies, specific crimes of IP violations have been added to the criminal code.³⁷ Institutionally, an elaborate government apparatus has been set up to administer and enforce IP laws, and a special IP adjudication division has been established

34 According to Bloomberg, almost 70% of the \$19.5 billion of acquisitions in China announced by foreign investors in 2006 were not completed, whereas all but 25% of the \$34.4 billion in purchases were cleared in 2005. See "China's buyout backlash stalls investments by Carlyle, Ewing," Bloomberg.com (30 November 2006) (suggesting that China's tougher stance on foreign takeovers may be a backlash from the aborted acquisition in 2005 of California-based Unocal Corp. by Cnooc. Ltd., China's biggest offshore oil producer, due to a threatened veto of the deal by the US Congress on the ground of national security).

35 Among other things, accelerated inflows of foreign capital have contributed to a massive accumulation of foreign exchange reserves for China, which puts tremendous pressure on the Chinese currency to appreciate – a matter of serious concern to the Chinese government.

36 For a list of the IP conventions acceded by China, see TPR Report, p. 147, Table III.16.

37 A section on IP violations was added to the Criminal Law in 1997, imposing up to seven years of imprisonment for counterfeits, piracy and violations of trade secrets.

within the People's Courts. As a result of these efforts, China today has an extensive and basically WTO-compliant legal framework for IP protection.

Despite this, IP violations remain rampant in China. The main problems identified by China's major trading partners include: lack of co-ordination among the large number of government agencies responsible for IP enforcement; local protectionism and corruption; inadequate deterrence provided by the system of administrative, civil and criminal penalties; and insufficient training of government personnel.³⁸ Although in recent years the government has stepped up enforcement efforts, weak protection of IP rights remains one of the main complaints of the foreign companies doing business in China.

Inadequate enforcement of IP rights in China has prompted the United States to file a formal WTO complaint, charging China for failure to protect IP rights according to TRIPS standards.³⁹ Among other things, the United States claims that China's criminal law sets inadequate thresholds for criminal procedures and penalties for trademark counterfeiting and copyright piracy. While the outcome of the case remains to be seen, this long-threatened WTO complaint has put great pressure on the Chinese government to enhance IP law enforcement. Indeed, merely days before the United States filed the complaint, the Supreme People's Court and the Supreme People's Procuratorate jointly issued a judicial interpretation, lowering certain thresholds for criminal punishment for copyright piracy by 50 per cent.⁴⁰

Domestic Governance

The Protocol sets out a number of special obligations concerning the transparency, uniformity and impartiality of the Chinese system. The need for implementing these obligations has stimulated significant changes in domestic governance.

Transparency

Transparency is one of the basic values of the WTO system, given that open markets require transparent rules and procedures. The WTO obliges members to publish all trade-related laws, regulations and other government measures of general application before their implementation and enforcement, and to notify the WTO of any change in such laws, regulations or measures. Because of its historical lack of transparency, China was asked to undertake additional transparency obligations that are more stringent than the general requirements.

38 TPR Report, p. 153.

39 See n. 51.

40 The Supreme People's Court and the Supreme People's Procuratorat, *Guanyu banli qinfan zhishichanquan xingshi anjian juti yingyong falü ruogan wenti de jieshi (Interpretation on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (II))*, adopted 4 April 2007, effective 5 April 2007 (reducing the threshold for copyright piracy punishable by imprisonment of less than three years from 1,000 to 500 illegal copies, and that between three and seven years from 50,000 to 25,000 illegal copies).

It is required, for instance, to designate an official journal dedicated to publication of all measures affecting trade, to establish enquiry points where traders may obtain information about such measures, to provide a reasonable comment period before implementation of such measures, and to translate all such measures into one of the official languages of the WTO and make such translation available to WTO members within 90 days.

China has taken concrete steps to implement its transparency commitments. These include efforts to open up the rulemaking process to more public participation and to standardize the procedures for granting administrative permissions. For instance, the Law on Legislation (2000) mandates that government agencies solicit public comments during the drafting of administrative rules. And the Law on Administrative Permissions (2003) forbids government agencies from using unpublished documents as the basis for granting administrative licences. In addition, most central government agencies and local governments have launched their own websites, and many of them allow the public to provide input directly. Increasingly, laws, regulations, administrative rulings, judicial interpretations and court decisions have become generally available on the official websites.

In sum, transparency in the Chinese regulatory system has improved markedly in connection with WTO accession. The government has yet to implement its WTO commitments on transparency fully,⁴¹ and lack of transparency still ranks among the top concerns for foreign businesses operating in China. However, the present condition is a far cry from the days when “internal documents” ruled government administration, and there is reason to expect further improvement as the Chinese public embraces transparency as a norm for good governance.

Judicial review

To ensure that government measures affecting trade are administered fairly, the WTO requires members to maintain independent tribunals and proper procedures for the review of administrative decisions relating to trade. The Protocol specifies that judicial or administrative tribunals in China shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter. And it further requires that China provide private parties affected by administrative action the opportunity for appeal “in all cases” to a judicial body – a standard exceeding WTO general requirements⁴² – and that the reasons for the decision on appeal must be provided in writing.

41 For instance, as late as March 2006, the State Council was still instructing its ministries and local governments to notify their trade-related regulations to MOFCOM so as to enable their timely publication in the designated official journal.

42 While judicial review of final administrative decisions is guaranteed under TRIPS, appeal to a court of the decision by an independent tribunal is merely referred to as a possibility under GATT and not mentioned in GATS.

Previously under Chinese law, administrative decisions on certain trade-related matters were excluded from judicial review, including decisions concerning the validity of patents and trademarks, and determinations in antidumping and countervailing cases.⁴³ To implement its WTO commitments, China has amended relevant legislation so as to provide the right to appeal to courts in all such WTO-related matters. In 2002, the Supreme People's Court issued three judicial interpretations to clarify the scope of and standards for judicial review of WTO-related administrative decisions. It also designated courts at the intermediate or higher level as the first-instance trial courts for international trade cases – a move aimed to ensure impartiality and quality of judgement in the adjudication of WTO-related cases, given that judges in upper level courts tend to be less vulnerable to external interference and are generally better qualified than judges in the basic courts. It is, however, still too early to assess the situation of judicial review in WTO-related cases since few such cases have been reported.

On a broader scale, WTO requirements on judicial review provided a fresh impetus to the development of administrative law and judicial reform in China. Important legislation was adopted, including the Law on Administrative Review (1999), Law on Legislation (2000) and Law on Administrative Permissions (2003), which set boundaries for the exercise of government powers and provide the legal basis for judicial review of specific administrative actions. WTO accession has also inspired intensified efforts by the Chinese judiciary to improve the competency level of its judges and to strive for judicial independence. Although substantive judicial independence in China cannot be achieved without political reform, the WTO requirements on impartiality and independence of tribunals have lent legitimacy and support to the call of the Chinese judiciary for freedom from local and departmental interferences.⁴⁴

Uniform administration

In the Protocol, China undertook to administer all its laws, regulations and measures, including those issued at the sub-national level, in a uniform, impartial and reasonable manner. Specifically, China promised to annul all local laws and measures inconsistent with China's WTO obligations, and to establish a complaint mechanism under which private parties can bring to the attention of national authorities cases of non-uniform administration. These special commitments target local protectionism, which has become a major concern for foreign businesses.

It is unclear to what extent China has implemented these commitments. Many problems China faces today are associated with entrenched localism. From early

43 The Administrative Litigation Law (Article 12) excludes from judicial review administrative decisions that are declared to be final by any other laws.

44 See generally, Veron Mei-Ying Hung, "China's WTO commitment on independent judicial review: impact on legal and political reform," *American Journal of Comparative Law*, Vol. 52, No. 1 (2004) pp. 77–132.

on, China adopted decentralization as a core reform strategy. Local governments have been given power to adopt measures necessary to boost local GDP growth and are allowed to benefit directly from such growth.⁴⁵ As a result, they have been heavily involved in the investment in and operations of local enterprises. To promote their economic interests, local governments often provide subsidies to local firms or otherwise protect them against outside competition. They may have little incentive to enforce IP laws if local enterprises profit from violations of IP rights. Their control over local courts means that it may be impossible to obtain independent and impartial judicial review of matters involving local economic interests. Moreover, the close ties between local officials and firms make it extremely difficult to combat official corruption, which has been plaguing the Chinese system and undermining the legitimacy of the regime.

In principle, WTO rules apply to the entire territory of each member, and a member is responsible for WTO violations by its political subdivisions. The WTO agreements specifically permit a member to bring WTO complaints against measures taken by the local authorities of another member. Hence, if the Chinese government lacks the political will to rein in local protectionism, other members do have the means available at the WTO to compel it to take action.

Normative impact

Potentially more significant than the legislative and institutional improvements are the normative changes brought about by the WTO accession. During the years leading up to and following the accession, the government and academia engaged in an unprecedented scale of public education on the WTO, portraying it as mostly a progressive force for China.⁴⁶ As a result, WTO principles and concepts, such as nondiscrimination, transparency, due process and judicial review, have gained wide acceptance in China as the norms for good governance in a modern society. The public's appeal to WTO norms often goes beyond the technical scope of their application; a notable example was the popular demand for "national treatment" of domestic enterprises discussed above. There is also a tendency among academics to construe WTO concepts liberally and expansively so as to give them meanings in a larger political and constitutional context.⁴⁷ As WTO principles and concepts acquire a normative force in China, their overall impact on the construction of rule of law may well be more profound in the long run than the WTO-conforming changes at the legislative and institutional level.

45 See Kenneth Lieberthal, "Completing WTO reforms," *The China Business Review* (September–October 2006), pp. 52–57, for a perceptive analysis of this strategy and its positive and negative consequences.

46 During this period, the number of books and articles published in China on WTO-related topics may have exceeded that in the rest of the world combined.

47 For example, legal scholars interpreted "market economy" as a WTO norm requiring the protection of economic rights of citizens under the Chinese Constitution. See Xin Chunying and Feng Jun (eds.), *WTO yu Zhongguo xingzhengfa gaige (WTO and the Reform of Chinese Administrative Law)* (Beijing: Social Sciences Academic Press, 2005), ch. 1.

Enforcing China's Commitments

With the power to issue binding decisions and authorize trade sanctions against noncompliance, the WTO arguably has the most effective enforcement system of all international organizations. In the case of China, the WTO also adopted the special transitional review mechanism (TRM) to monitor compliance. The enforcement of China's commitments through these mechanisms has already had an impact on the Chinese system.

Transitional review mechanism

The annual TRM reviews put China's practices under the constant scrutiny of other members, and give them the opportunity to raise many of their concerns with China in a timely manner. During the review in 2006, for example, members requested clarification and explanation from China on WTO consistency of its new automobile policy, the new regulation on mergers and acquisitions, and the new banking regulations. Even though China resents the TRM as discriminatory, it has accepted the annual exercise. As the Chinese government is compelled to address member concerns, the process has added transparency to the Chinese system.

Dispute settlement

To date, China has encountered eight WTO complaints, of which five were brought by the United States, and one each by the EU, Canada and Mexico. The eight complaints involve five sets of disputes. The first, *China – Value Added Tax*, was filed by the United States in 2004, alleging that China's policy of refunding value-added taxes to domestically-produced integrated circuits discriminated against imported circuits.⁴⁸ China settled the case through consultations and withdrew the measures in 2005.

All other disputes are currently pending. The second, *China – Auto Parts*, involves three complaints brought by the EU, the United States and Canada in 2006.⁴⁹ At issue are Chinese regulations that impose a surcharge on imported automobile parts used in manufacturing vehicles for sale in China, effectively raising the tariff on parts from 10 to 25 per cent, the same rate as for imports of complete vehicles. The third dispute, *China – Subsidies*, was initiated by the United States in February 2007, later joined by Mexico.⁵⁰ The complaints charge that China has been subsidizing domestic firms (including FIEs) through various tax breaks that are WTO-illegal. The fourth and fifth disputes were brought by the United States on the same day in April 2007. The fourth, *China – Intellectual Property Rights*, claims that China's criminal law does not provide sufficient punishment for IP violations, and that the denial by China's copyright law of

48 WTO: *China – Value-Added Tax on Integrated Circuits*, DS/309 (March 2004).

49 WTO: *China – Measures Affecting Imports of Automobile Parts*, DS339, DS340, DS342 (April 2006).

50 WTO: *China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments*, DS358, DS359 (February 2007).

protection for works under censorship reviews is inconsistent with TRIPS requirements.⁵¹ The fifth, *China – Trading Rights*, raises issue with China's implementation of its commitments on trading rights and distribution services for publications and audiovisual products.⁵² It complains that, contrary to its commitment to fully liberalize trading rights, China has continued to reserve the right to import foreign cultural products to designated SOEs.

These pending disputes challenge important aspects of China's industrial policy and legal regime. The automobile-parts case and the subsidy case target tax incentives and local content requirements which China has used for decades as part of its development strategy. Although on its accession China agreed to comply with all WTO rules and even accepted more stringent obligations on subsidies than any other member,⁵³ the government has not fundamentally changed its policy. The IP case is legally most significant because it challenges WTO-consistency of two important pieces of Chinese legislation: the Criminal Law, an area traditionally reserved for national jurisdiction, and the Copyright Law in the context of government censorship. The trading rights case also raises sensitive issues of government control over importation and distribution of foreign cultural products. If China loses in these cases, it will have to change its law and policy to comply with WTO rulings.

At least in the initial period, China responded well to all WTO complaints against it, actual or threatened. As noted above, it settled its first WTO dispute with the United States by withdrawing the VAT measures in question. In 2004, the EU threatened to bring a WTO complaint against China over its export restrictions on coking coal used in European steel production. Although China claimed that the restrictions were necessary to reduce severe pollution caused by excessive coke production, it soon backed down and agreed to maintain the level of coke supply to the EU.⁵⁴ In late 2005, when the United States threatened to initiate a WTO case against China's antidumping determination regarding linerboard, MOFCOM quickly repealed that decision.⁵⁵ China's accommodating attitude, however, appears to have changed in 2006 when it refused to settle the automobile-parts case through consultations. And it has recently vowed to fight the IP case till the end. This change of attitude is significant for China, which has never been sued, let alone lost a case, in any other international court.

51 WTO: *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, DS362 (16 April 2007).

52 WTO: *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, DS363 (16 April 2007).

53 See Julia Ya Qin, "WTO regulation of subsidies to state-owned enterprises (SOEs): a critical appraisal of the China accession protocol," *Journal of International Economic Law*, Vol. 7, No. 4 (2004), pp. 863–919.

54 BNA, WTO Reporter, "EC threatens WTO suit against China unless it lifts coking-coal restrictions" (25 May 2004); "EC, China reach agreement on continued Chinese shipments of coking coal to Europe" (2 June 2004).

55 BNA, WTO Reporter, "China lifts dumping duties on linerboard in face of US' threat of WTO proceedings" (11 January 2006).

It suggests that China has finally accepted a rule-based approach, instead of relying on diplomacy exclusively, in settling its international disputes.

The number of WTO cases brought against China is still small compared to those brought against other major trading powers during the same period.⁵⁶ This may be in part a result of the “honeymoon effect” – trading partners were willing to give China some leeway in light of its recent accession – and in part because of China’s willingness to compromise in threatened disputes as discussed above. This situation, however, is changing. Both the United States and the EU have indicated an intention to bring more WTO cases against China. Judging from the numerous concerns raised during the TRM reviews, there is no shortage of issues that could evolve into formal complaints.

Relying on WTO litigation to enforce China’s WTO obligations undoubtedly has its limits. The dispute settlement process is time-consuming and resource-intensive, and complaints can target only selected measures. Moreover, WTO rules do not effectively regulate all government policies affecting trade – the Chinese currency controversy is an example. Nevertheless, given that China’s economy is so heavily reliant on trade and that its practice is so closely monitored by other members, it is reasonable to expect that WTO process will be effective in enforcing China’s obligations.

Future Prospects

WTO accession has brought about extensive changes to China’s foreign trade and investment regime. As a result, the Chinese system today is far more open and less opaque than a decade ago. But what does WTO membership hold for China in the next decade? The reason that the accession had such a major impact on China is because it served the agenda of domestic economic liberalization set by Chinese leadership in the 1990s. Now that China has substantially implemented its market access commitments and the government has achieved the main objectives of the accession, will China continue to liberalize its economy beyond what was called for by the WTO? The answer will of course depend on the vision of the current leadership and its future agenda. Given the widening income gap and severe environmental degradation in China, the government is compelled to adjust its development strategy to pursue more balanced and sustainable growth. This adjustment, however, may slow the process of further economic reform and liberalization.⁵⁷

In the next few years, the impact of the market access commitments made in the accession will wane as the domestic economy adapts to the new level of foreign competition. The impact of WTO rule obligations, by contrast, may be

56 From 2002 to 2006, more than 40 WTO complaints were brought against the US and more than 20 against the EU, although only three against Japan.

57 Indeed, China has declared that, given its extensive accession commitments, it should not be required to make substantial new concessions in the Doha Round. BNA, WTO Reporter, “China, other new WTO members seek special terms on farm tariff, subsidy cuts” (14 March 2007).

felt more acutely. With the continuing expansion of its trading power, China will be likely to find itself a frequent target of WTO complaints. When China loses a case, the government will feel the external constraints imposed by the WTO directly as it must change the offending law and practice or face possible trade sanctions. The Chinese public may then develop an image of the WTO quite different from the positive one promoted by the leadership during the accession era. The issue of sovereignty and domestic regulatory space will be raised. Other issues that have long generated controversies about the WTO and globalization in other parts of the world, such as the relationship between trade and environment, trade and labour rights, and trade and other social policies and values, will also attract greater attention in China.

Thus, when the dust settles from the accession commitments, the impact of the WTO on China will become comparable to that on other major trading nations. That, however, will not diminish the historic significance of the accession. WTO membership has integrated China into a multilateral system which, through its extensive rules and enforcement mechanisms, will impose meaningful disciplines on China in charting its future course of economic development.

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