Three Years After China's Accession to the WTO: A Basic Account of China’s Efforts in Implementing its WTO Commitments

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I. Background

On December 11, 2001, China became the 143rd member of the World Trade Organization (WTO), bringing to an end a fifteen-year quest to join the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT).

China viewed joining the WTO as a means to preserve and expand its access to export markets abroad, especially the European Union and the U.S. Other WTO members envisioned that China’s WTO membership would enhance the development of an open market economy in China and, in particular, foster the rule of law in international trade relations with the country.

China was admitted to the WTO at a point of time where its economic and legal system was still very far from WTO-norms. In the history of the GATT, and now World Trade Organization, no other country of such trading importance has ever been admitted at a comparatively early stage.

In return for the early acceptance into the WTO, China had to commit to an extensive range of legal and regulatory reforms as well as tariff reductions. The Accession Agreements require China to establish an open and transparent trade regime in conformity with WTO rule, in particular its standards concerning market access, national treatment, transparency, and the protection of intellectual property rights (IPR).

China has now been a member of the WTO for nearly three years. The aim of this paper is to provide a rough overview on the annual progress in implementation of China’s WTO commitments during this period (2002, 2003, 2004).

II. China’s Implementation Progress: 2002-2004

China has made important headway since its WTO accession three years ago. It has progressively undertaken tariff cuts, reviewed thousands of laws and regulations to mirror its WTO obligations, and established new transparency procedures in many national and sub-national ministries and agencies. Nevertheless, China’s compliance with its WTO commitments has, over the past three years, been rather uneven.

1. The First Year (2002)

The initial period of China’s WTO membership was characterized by important steps forward. Progress was achieved both in making many of the required systemic changes and in implementing specific commitments. The principal focus of China’s first year of WTO membership was on its frame-

2 In the Accession Agreements, China commits, in particular, to the following: reduction of tariffs from an average of 17% to 9% over several years; abolition of requirements regarding foreign exchange balancing, local content and export performance as conditions for government approval of foreign investment contracts; lifting of the extensive restrictions on trading rights for foreign companies and opening up of the full range of distribution services to foreign companies for most products; national treatment in areas such as taxation, government regulation and the testing and certification of imported and nationally-produced products; adjusting the regulations for technical barriers to trade, import licensing procedures, customs valuations and pre-shipment inspection making them more transparent, non-discriminatory and objective; relaxation of foreign investment restrictions on many important services industries, such as telecommunications (for the first time ever), financial services, professional services, business services, audio-visual and tourism; implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and building-up of a transparent, predictable, and rule-based system for trade with China. For a more complete summary see, e.g., WTO News Press/243, September 17, 2001, WTO successfully concludes negotiations on China’s entry, available at http://www.wto.org/english/news_e/pres01_e/pr243_e.htm (visited October 23, 2004).

3 Considering the broad range and complexity of China’s WTO commitments, this short overview merely aims to highlight the implementation progress with regards to issues commonly referred to in statements and publications of foreign business and state entities dealing with the changes of China’s economic policies after its accession to the WTO. The focus of this summary is on the implementation progress during the current year of 2004. – It includes related information available as of October 25, 2004.
work of laws and regulations governing trade in goods and services, at both the central and local levels. Additionally, China also devoted considerable resources to the restructuring of the various government ministries and agencies with a role in overseeing trade in goods and services. Some of these changes were required by China’s accession agreement, while others were undertaken by China to facilitate its compliance with WTO rules.

Another significant focus for China during the year 2002 involved education and training. With the technical assistance of the WTO as well as of other multilateral organizations and individual countries, China started an extensive campaign to teach central and local government officials and state-owned enterprise managers about both the requirements and the benefits of WTO membership, with the goal of facilitating China’s WTO compliance. In addition, several WTO information centres were set up to provide instructions relating to the WTO and the impact of China’s entry. Positively, China further carried out the required tariff reductions, began the process of removing numerous non-tariff trade barriers, and worked to improve its standards regime.

As efforts concentrated on the areas mentioned above, little progress was achieved in other fields. One area of cross-cutting concern highlighted in various assessments of China’s Year 1 implementation record involved transparency, a lack of effective or uniform application of China’s WTO commitments at local and provincial levels, and intervention by Chinese government officials in the market. Apart from these systemic issues, special concern was raised regarding the protection of intellectual property rights, and the reluctant opening of the agriculture and services sectors. The incomplete implementation of some WTO commitments in the first year was partly due to start-up problems, including an incomplete understanding of WTO rules and practices as well as a lack of coordination among relevant ministries in the Chinese government.

2. The Second Year (2003)

While foreign observers generally praised China’s dynamic implementation of its WTO commitments in its first year following accession, they were less enthusiastic about the progress in the second year. Implementation efforts were seen to have lost considerable momentum, despite improvements towards the end of the year. A foreign commentator came to describe China’s implementation progress in 2003 as a “yard by yard game”, in which each step towards implementation would come only after contentious arguments over terminological definitions, delays to or beyond mandated deadlines, or the imposition of new measures that were ostensibly directed towards WTO compliance but actually created new obstacles to foreign business activity. Other observers raised complaints that China had deliberately tried to frustrate China’s accession process.


10 Especially slow progress was reported regarding China’s administration of its tariff-rate quota (TRQ) system for bulk agricultural commodities. For more information please refer to one of the reports mentioned in the footnote above.

11 Complaints were raised, in particular, regarding high capitalization requirements and restrictions on branching.


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For a comprehensive overview of assistance projects between 2001 and early 2003 see Stewart supra note 4.

Five national WTO centres were established, one each in Beijing, Hainan, and Shenzhen, and two in Shanghai. In addition, numerous private WTO centres were set up. A wide array of information on the WTO was further made available in a broad variety of publications and on Chinese web pages. According to the Asian Wall Street Journal, 20-22 July 2001, p. 3, as of mid-2001 there were more than fifty-four web sites and 41,458 Web pages relating to the WTO on the Chinese Internet portal Sina, while Yahoo also offered 15 such Web sites and 113,000 WTO Web pages.

China undertook tariff reductions in 70% of the categories mandated by the WTO (including IT products, chemicals, autos and auto parts, wood and paper products as well as many agricultural products), causing the average tariff rate to drop to 12% from 15.3% since accession. See Far Eastern Economic Review, December 5, 2002.
trate the effectiveness of the WTO’s Transitional Review Mechanism (TRM). This multilateral monitoring mechanism had been especially set up in order to assess the faithful implementation of its WTO commitments by China, considering its early admittance to the WTO and the immensity and complexity of its commitments.\textsuperscript{14} Reportedly, China had refused to collaborate with other WTO members’ requests for information and discussion of China’s WTO implementation measures in the expected way, disabling the TRM to function as a robust mechanism for placing multilateral pressure on China to address shortfalls.\textsuperscript{15}

Furthermore, observers were disappointed about the lack of improvement in many areas that had already given rise to much concern in the previous year:\textsuperscript{16} protection of intellectual property rights (continued IPR infringement affecting products, brands and technologies from a wide range of industries),\textsuperscript{17} transparency (uncertainty and lack of uniformity; limited opportunity to comment on proposed laws and regulations),\textsuperscript{18} high capitalization or other requirements exceeding international norms.

In addition to the shortfalls listed above, new concern arose. According to the European Chamber of Commerce in China (EUCCC) there was clear evidence for an increase in the use of non-tariff barriers, which are decidedly more difficult to monitor than tariffs. The EUCCC wondered if China was herewith consciously testing the framework of what might be acceptable as implementation practices.\textsuperscript{22} Examples were discriminatory tax policies (tax treatment regarding semiconductors)\textsuperscript{23} and the use of unique technical\textsuperscript{24} and safety standards\textsuperscript{25} geared to exclude foreign products.
A further cause for disappointment to many was that the important commitment to phase in trading and distribution rights to both minority- and majority-owned joint ventures was not implemented according to schedule.26

China’s WTO implementation efforts in 2003, however, took place against a challenging political and social backdrop. In 2003, China underwent a major leadership change, suffered a national SARS epidemic, undertook a sizeable restructuring of the government’s economic and trade functions to streamline the country’s administration of foreign and domestic trade,27 and faced a host of dislocations inherent in its transition from a planned economy to a more market-oriented economy.

Notwithstanding the many challenges mentioned above, a number of positive developments did occur in 2003. Market access was improved for several services. For example, the auto financing sector was opened up to foreign investment,28 and publication retailing was allowed for wholly foreign-owned enterprises.29 Furthermore, China solved outstanding concerns that had prevented its membership in the WTO’s Committee of Participants in the Expansion of Trade in Information Technology Products.30

Finally, there have been important new efforts to improve transparency. In order to achieve greater administrative uniformity and regularity, the People’s Congress, in August 2003, adopted the “Law on Administrative Licensing”.31 The law is considered to be a milestone as it reduces many costly licensing requirements and invalidates internal regulations as a basis for licensing. In order to make the regulatory drafting process more transparent, MOFCOM, in November 2003, adopted the “Provisional Regulations on Administrative Transparency”.32 These regulations aim to implement the commitment to provide a “reasonable period for comment to the appropriate authorities” before proceeding with the implementation of trade-related measures.33

3. The Third Year (2004)

The year 2004 has been characterized by overall progress compared to 2003.34 A number of holdover regulations have been converted to secondary laws, while new measures have been enacted. In addition, a number of new laws have been enacted, including the Law of Administrative Licensing.35

29 Provisional Regulation on Administrative Transparency (商务部政务公开暂行办法) released by MOFCOM in November 2003 (商务部办公厅发 [2003] 444 号). Following the release of these regulations, MOFCOM circulated for public comment a draft of its new Foreign Trade Law (March 2003), as well as the draft regulations on Management of Foreign Investment in the Commercial Sector (late 2003), and then incorporated many of the comments into the final text of the laws.
30 Part I, Art. 2 (C) para. 2 Accession Protocol.
issues from earlier years have been acted upon and some important commitments have been implemented even ahead of the December 11, 2004 deadline for China’s year 3 obligations. Nevertheless, certain problems and concerns remain, in particular regarding the protection of intellectual property rights.

III. Positive Developments

Of greatest significance to foreign investors in the year 2004 was the establishment of full trading and distribution rights in most sectors. This had been one of the key conditions for China’s accession to the WTO. In the Accession agreements, China had committed to a progressive phase-in of full trading and distribution rights by December 11, 2004.35 The initial delays in this process had previously been ground for concern.36 The new regulations made an effort to incorporate a number of key suggestions from the foreign business community and seem to largely mirror China’s WTO commitments.

Trading rights, i.e., the right to import and export freely, were extended to all foreign and domestic enterprises (as well as individuals) in nearly all sectors38 by virtue of the revised “Foreign Trade Law” (FTL),39 and the accompanying implementing regulations (the “Measures on Record Registration of Foreign Trade Operators”).40 The changes became effective on July 1, 2004, well ahead of the December 11 deadline. The new regulations replace the formerly required approval process for trading rights41 with a simple process of ‘registration for the record’.

Distribution rights have been substantially regulated in the “Administrative Measures on Foreign Investment in the Commercial Sector” (Administrative Commercial Measures).43 These provisions allow all foreign investors to conduct domestic commerce through agency, wholesale, retail, and franchising by December 11, 2004, subject to certain conditions and approval.44 Foreign-invested companies in the form of majority owned joint ventures were granted certain distribution rights as early as June 1, 2004. Implementing regulations that clarify, for example, how existing foreign-invested companies can incorporate distribution services into their existing scopes of business, are however still missing. The commitment to establish – also by December 11, 2004 – regulations permitting direct selling (“sales away from a fixed location”) had not yet been implemented.45

Aside from the extension of trading and distribution rights, progress took place in a number of other sectors. Several business sectors were opened up further to foreign investors. For example, geographic restrictions and capitalization requirements were eased in the banking46 and insurance47

36 See the section on year 2 above.
37 E.g., the elimination of high capitalization requirements in the final version of the Regulations on Management of Foreign Investment in the Commercial Sector. See: The U.S. Chamber of Commerce (supra note 34).
40 The U.S. Chamber of Commerce (supra note 34).
41 In the past, only those companies which were granted import / export licenses could officially engage in foreign trade – with the exception of foreign-invested enterprises importing unfinished products for processing or exporting processed products.
42 Distribution rights for certain kinds of commodities, such as books, newspapers and periodicals, oil retailed at gas stations, medicines and/or cars, and agriculture and related products, in addition remain subject to other specific rules and regulations. See art. 17 of the Administrative Commercial Measures. See further, art. 19 (franchising) art. 20 (auction business).
43 The U.S. Chamber of Commerce (supra note 34).
44 The U.S. Chamber of Commerce (supra note 34).
45 An approval decision is required to be rendered within four months after the application materials are received for review. For a good overview on the distribution rights see Robert C. Mayer, China Lowers the Trading Floor, July 2004, available at http://www.white wms.com/CM/NewsAlerts/NewsAlerts345.asp (visited October 30, 2004).
46 The drafting process has included extensive consultations with companies and others with an interest in this issue. The regulations were scheduled to be released early September, but there seems to be a delay.
47 Implementing Rules for the Administrative Regulation of Foreign-Invested Financial Organizations (中华人民共和国外资金融机构管理条列实施准则), issued by the China Banking Regulatory Commission (中国银行业监督管理委员会) on July 26, 2004, lowered the minimum registered capital requirements and removed the restrictions that only one new branch could be opened every twelve months.
sectors; and the convention services markets were opened to wholly foreign-owned enterprise participation (a step not even demanded by China’s WTO commitments). 48 Further, China undertook efforts to improve the administration of its tariff rate quota system for agricultural products, 49 and, in mid-2004, agreed to rescind its contested value-added tax (VAT) on semiconductor imports. 50 Other WTO members, most of all the United States, had considered this policy to be a violation of the WTO’s National Treatment obligation. The U.S. had, on these grounds, initiated its first dispute resolution case before the WTO in March 2004. 51 The European Union, 52 Japan 53, and five more countries 54 had joined the case as co-plaintiffs in late March and April 2004.

IV. Ongoing Concerns

Notwithstanding the progress mentioned above, there is continuous and sometimes new concern regarding the implementation of several of China’s WTO commitments.

The single greatest concern relates still to China’s ongoing violation of its TRIPS obligations. Even though China has made important legislative efforts to protect intellectual property rights (IPR), 55 enforcement of IPRs is reported to be inefficient, 56 often due to a lack of transparency and coordination among government agencies, local protectionism and corruption, high thresholds for criminal prosecution, and a lack of resources and training. China reiterated its willingness to improve the protection of IPRs when, in late August, it announced to undertake a one-year long intensive, multi-agency effort to combat infringements. 57

In addition to the unsatisfactory IPR situation, both, the U.S.-China Business Council 58 and the European Chamber of Commerce in China (EUCCC) 59 note in their most recent reports that China still has a long way to go, especially, in increasing general transparency, adjusting to international standards and eliminating licenses and quotas.

State intervention in designated strategic sectors of China’s economy is reported to be another ongoing problem. 60 Finally, there are special worries regarding the services sector. It seems that, in addition to the old problem of generally high capitalization

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49 See, e.g., MOFCOM Announcement No. 60 of September 27, 2004, Releasing the Detailed Rules for Distribution of Tariff Quotas on Import of Palm Oil, Soybean Oil, Colza Oil and Sugar in 2005 (商务部公告 2004年第 60号 植物油，食糖分配实施细则), China Foreign Trade and Economic Cooperation Gazette 2004, no. 61.


61 The U.S.-China Business Council (supra note 34).


63 The U.S.-China Business Council (supra note 34).
requirements, a roll-back of certain favourable market access conditions has been taking place. For example, in areas such as construction and engineering services, China has started to adopt certain policies that are more restrictive than those in place prior to its WTO accession. This would be a violation of China’s commitment under the WTO’s General Agreement on Trade in Services not to make requirements in services sectors more burdensome than at the time of its accession to the WTO.

As the December 11, 2004 deadline for the implementation of year 3 commitments is approaching, doubts arise if China will timely fulfil its obligation to further open the telecommunications sector. By December 11, China must raise the ceiling on foreign joint venture participation in mobile voice and data services to 49% and open fixed-line basic telecom services among Beijing, Shanghai, and Guangzhou to joint ventures with up to 25% foreign equity participation.

V. Summary and Outlook

Looking back over the nearly three years since China joined the World Trade Organization, it appears that China’s implementation efforts of WTO commitments have been uneven, with initial great progress in the first year, a considerable slow-down in the second year, and some new dynamics in the ongoing third year.

While China has generally reduced tariffs in accordance with its accession commitments, it still maintains non-tariff barriers, such as licenses and quota – and partly erects new ones, i.e., through the establishment of unique national standard requirements. Continued areas of concern include, moreover, the protection of intellectual property rights, transparency, national treatment, and the continued interference of state entities in the market.

The problems with China’s WTO compliance have been analysed to fit into several categories. Other problems are believed to mirror internal difficulties within the Chinese government in getting ministries to make adjustments agreed to by the central government in their areas of control. Still other problems are considered to reflect the need for infrastructure changes or longer-term educational or normative behaviour changes, especially in the field of piracy and counterfeiting of intellectual property in China. Despite a mixed evaluation of China’s implementation efforts, most foreign observers and investors seem to agree however that the country’s inclusion in the WTO has had an overall positive impact on China’s business climate.

62 Delays of a few months or longer in matters that China ultimately complied with would be examples of this category.
63 Problems in TRQ administration in agriculture and the delays and additional unwarranted burdens imposed in the financial services areas would be two typical examples of this category.

64 See Stewart (supra note 4), pp. 3-4.