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**ABSTRACT**

We discuss China's stance in the WTO post-accession, noting the many issues with implementation of China's accession terms by 2007. We evaluate how much benefit China can realistically receive from WTO membership given current problems with dumping actions against China and trade restrictions against textile and apparel exports. We discuss emerging WTO and non-WTO trade disputes involving China, and China's now extensive regional trade initiatives which raise issues of multilateral regional balance on China's trade policy strategy.

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## 1. Introduction

Prior to the completion of the lengthy negotiations on Chinese WTO Accession,<sup>1</sup> there was extensive debate inside China on the merits of this step from a Chinese perspective. This debate has continued despite the initiation of implementation of the terms of accession now due to be completed by 2007. The talk in China today is of post-WTO China; and every new policy initiative is discussed not only in terms of its WTO compatibility, but also in terms of its ability to contribute to the implementation of the accession process and the eventual harnessing of China's resulting WTO benefits. The completion of accession negotiations was been hailed internally as a milestone in China's economic development, with claims of significant additions to growth potential, and a new policy environment underpinned by the single most important policy departure since Deng Xiaoping's introduction of the responsibility system in 1976. At the same time, WTO accession has been criticized by detractors as establishing too quickly a western style market-oriented environment in China, which will likely lead to greater inequality and over-centralization, and has resulted in China giving away too many WTO bargaining chips which could have been more effectively used in later global negotiations.

From outside, this discussion inside China seems orthogonal to recent discussion of the WTO elsewhere. Globally there has until recently been pessimism on prospects for the completion of the Doha Round in 2005,<sup>2</sup> rejection of the WTO and global institutions by anti-globalization

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<sup>1</sup> These concluded with the adoption of the report by the WTO working party on Chinese Accession on November 10, 2001.

<sup>2</sup> A significant change in atmosphere has occurred only recently. In June 2004 at a meeting in Georgia the G-8 countries following an EU initiative mutually agreed to terminate export subsidies in agriculture, removing a central impediment to forward progress in the agriculture negotiations in the Round. The EU have also removed all requests for a negotiation in competition policy and investment. The G-8 claim is that this will enable progress to be made in July on a final package but developing countries remain cautious. See Raymond Colitt, *Financial Times*, June 15, 2004, and Frances Williams, *Financial Times*, June 23, 2004.

protesters, a sense of an overburdened and, at times, atmosphere-poisoned dispute settlement process in the WTO whose credibility is in some eyes increasingly becoming tarnished.<sup>3</sup> This pessimism is also compounded by growing acceleration of a seemingly post-Uruguay Round headlong rush into Bhagwati's spaghetti bowl of overflowing and inconsistent regionalism, with multiple US and EU regional initiatives, and many other bilateral or small new group arrangements.

The point of departure for this paper relative to the substantial literature on the possible impacts of Chinese accession<sup>4</sup> is to instead focus on China's WTO situation in the post-Uruguay Round pre-Doha Round completion period.<sup>5</sup> We focus less on accession and more on issues surrounding China's participation in the WTO post accession.

China, for now, even though a large entity with a significant and ever more sophisticated delegation in Geneva and an active trade ministry in Beijing has been largely content to observe and try to better understand WTO process, rather than to actively promote new initiatives. But as time moves on from 2002 and 2007 approaches, what China actually should and can do in the WTO is the issue.

We ask a series of questions to help focus our discussion. We ask how important is the WTO membership now achieved to China in terms of yielding traditional access benefits to markets

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<sup>3</sup> The atmosphere in dispute settlement has been adversely affected by critical US-EU cases in bananas and growth hormones, where due to the time limits on process agreed to in the Uruguay Round, multiple panels are spawned by a single initial dispute, and the reports of one panel are never finally accepted by all parties. Other US-EU trade disputes such as steel have also contributed to this atmosphere. See for example, Helene Cooper, *Wall Street Journal*, April 12, 2001 or James C. Hecht, *Law and Policy in International Business*, 2000.

<sup>4</sup> See for example Elena Ianchovichina and Will Martin (2003) The World Bank and Yang, Yongzheng (2003) International Monetary Fund.

<sup>5</sup> As such this seemingly goes beyond the discussion in Lardy (2002) World Bank (1997).

around the world if accession terms, as we believe, yield China little on dumping, and textiles and apparel? Is the Chinese interest more in quality of access or security of access that China already has; and if the latter, what extra does WTO membership offer China on this score? Does WTO membership help with trade disputes or merely serve to generate more?

In our discussion we largely put on one side the use of the WTO as a masthead to cement and underpin domestic policy reform, which was seemingly a major factor in the Chinese decision to seek accession, and we instead discuss a series of key short to medium term trade access issues. These include antidumping actions against China, a prospective new global trade regime in textiles and apparel following the end of the Multifibre Arrangement, and a growing list of trade conflicts both inside and outside the WTO. We ask what WTO membership can potentially do for China in these areas. We also ask how regional and multilateral trade strategies for China can best be commingled, and conclude with a discussion of how China's interests in the WTO overlap with those of other larger emerging economies (India, Brazil, and Russia) and with the WTO plurality of medium to small poorer countries who formally can outvote all in the WTO?

The two central arguments we make are firstly that China's WTO membership seemingly changes little on her two central access issues of antidumping and textiles and apparel. We also argue that the complexity both of the WTO agreements inherited on accession (around 26,000 pages of text to the Uruguay Round decisions) and of current Chinese policy instruments provide the potential to generate many new trade disputes involving instruments of policy not previously encountered by the WTO.

We further argue that China has split interests in future trade arrangements. She has a global interest in using strong multilateral trade rules, similar to that of Japan in the 1960s, to allow relatively unhindered access to currently large EU and North American markets to fuel continued export growth. But regionally and locally China can exert power in regional or bilateral negotiations to obtain preferential access to rapidly growing regional markets, but this is inconsistent with both the spirit and letter of multilateral rules. We suggest that finding a way to combine these two interests in securing her market access interests will be central to China's trade growth in the next few decades.

China is well placed strategically to exert great influence over developments in the trading system in the next few decades if she chooses to exercise strong leadership among emerging powers in fora such as the G20. How the WTO will be changed by Chinese membership, and whether China's accession terms may eventually be (de facto) renegotiated a little, are hence the final issues we discuss.

## **2. China's Interest in the WTO**

There has been much discussion in the last few years of exactly what it was that took China into the WTO (or in Chinese eyes restored their GATT membership placed into suspension in 1950).<sup>6</sup> Arguments range from the need to have the security of firm MFN benefits in place of previous insecure arrangements (and subject to periodic review and renewal), to the domestic uses of

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<sup>6</sup> On March 6, 1950, the Taiwan authorities notified the UN Secretary General of its decision to withdraw from the GATT. See: University of Toronto web site: *China's Accession to the WTO: A Chronology of Major Events between China and the GATT/WTO*.

WTO membership by modernizers who wanted to see genuine market-based policy reform which would speed growth and reform and curb the power of provinces.<sup>7</sup>

In our view there was a deeper WTO accession debate in China, which should be seen as part of a longer historic discussion of China's relationship with the outside world and one significantly coloured by Chinese engagement with the European powers in the late 19<sup>th</sup> Century. The central issue seems to be whether the world outside China was threatening to China and China should turn inward, or whether the outside world (and the WTO) represented a source of opportunity and modernization which China should embrace. The broad question debated was thus the one of engagement versus isolationism with the world community, more so than the precise terms of accession to the WTO which were offered by the rest of the WTO membership in the accession negotiations. The central argument in favour of accession was that China should pursue modernization and take its rightful place among the leading world powers in the global institutions, and WTO accession was the vehicle for this, not that the terms of accession were right.

For the larger powers negotiating with China (especially the US, the EU) the accession process, in some contrast, was seen primarily as an opportunity to pursue commercial policy interest and was not about engagement or isolationism. How could sharply improved access to a rapidly growing and potentially huge, if not dominant, market be secured, and at minimal cost in terms of formal reciprocal WTO commitments made to China? At the time of the conclusion of

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<sup>7</sup> As Long Yongtu, the former chief Chinese negotiator on accession (2000). "We must let those [WTO] rules that stand at the core of the market economy, and which have to be obeyed, take firm roots in our society and country, so that our own market economy may become one that is truly orderly, efficient, honest and clean." See Long Yongtu, *The Chinese Economy*, 2000.

accession negotiations, parallel speeches from Chinese and EU/US negotiators talked from the Chinese side of a fair and balanced arrangement with restoration of normal trade relations (NTR), and from the EU/US side of a one-sided agreement in which China had made all the concessions at great commercial policy benefit to EU/US business interests.<sup>8</sup>

One of us has elsewhere written on the terms of accession for China to the WTO as being breathtaking in scope, particularly in key service areas (banking, telecoms, insurance) where seemingly the most radical liberalization commitments anywhere in the world were undertaken with little or no reciprocal WTO benefits achieved by China and most future bargaining chips in the service areas surrendered.<sup>9</sup> The credibility of implementation for China's commitments by 2007 in these areas is now an issue.

One might thus well ask why was it that China was so concerned to achieve the accession outcome that ensued. Firmness of MFN benefits alone cannot, in our view, explain much since de facto China largely received MFN benefits already, despite periods of Congressional agonizing in the US over human rights and labour standards. Yongtu identified the advantages to China as allowing the development of China's service sector, generating international acceptance for China's economy as a market economy, allowing China some say over the setting of multilateral global trade rules, and greater access to dispute settlement.<sup>10</sup> And other countries (Taiwan being the extreme case) seem to have achieved remarkable long term export growth without formal WTO membership.

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<sup>8</sup> See the speech by Ambassador Charlene Barshefsky of the US Trade Representative to the Economic Club of Washington (March 16, 2000) describing what were portrayed as China's one-way concessions to US business interests. China's compliance with her WTO commitments is discussed in Stewart (2004).

<sup>9</sup> See Whalley, 2003.

<sup>10</sup> Yongtu, *The Chinese Economy*, 2000.

But now in the WTO, China's interests will lie in both using WTO disciplines and in writing new WTO trade rules in ways which most effectively guarantee access to large export markets in Europe and North America. A central question for China in approaching the accession decision should, in our view, have been how far these objectives could be achieved inside the WTO rather than outside a system of WTO multilateral trade rules, and how the terms of accession should be crafted, rather than the broader security related issues of global engagement.

And today, if Chinese growth rests on continued manufactured export growth fuelled by inward foreign investment, then this trade growth, in turn, must also rest on relatively free and secure access to large markets abroad. This interest has parallels to that of Japan in the 1960s and 1970s which has long been considered to be one of the major gainers from the post-war GATT system, especially, since on the whole and in the main, the GATT delivered relatively free and nondiscriminatory access to key export markets during a period of sharp export growth. The question for China is how to use membership of the WTO to keep markets in Europe and the US open, as well as open further growing and increasingly important export markets in middle income and poorer countries. Are there real and important opportunities, or is the reality that WTO membership offers relatively little extra, especially in key areas such as antidumping and textiles and apparel?

Our discussion thus points to a strong Chinese interest in both effective WTO dispute settlement and ongoing WTO negotiation to improve access terms.<sup>11</sup> It raises also the obvious question of how these fora can best be utilized by China. Should China actively pursue WTO disputes to

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<sup>11</sup> See also the discussion in Martin 2002.

open up markets abroad, or is the prospect instead one of numerous complaints against China fuelled by WTO membership which once inside the WTO she must spend time and energy dealing with. And seemingly these must be approached inside the WTO in the intellectual framework of Western neo-classical economic thought, still not fully compatible with China's chosen development route?

The Chinese interest in strong multilateral rules also raises a further dilemma. How can this interest be balanced with China's regional and more local interest to use market power in bilateral or regional negotiations to gain China preferential market access closer to home. And what of concessions on access to the Chinese market made to foreigners as a result of WTO accession and Chinese concerns over the non-trade areas of intellectual property, environment, labour standards, competition policy and others?

Finally, there are strategic issues for China in all of this which involve her national security interests and their links to trade and commerce which we do not discuss. Can WTO membership cement key security relationships that China has? Does joint-WTO membership for both China and Taiwan pose new problems, or create fresh opportunities? Does WTO membership help or hurt relations with the US and Europe? Does it allow for new leadership opportunities re the middle income and poorer countries which would otherwise not be available?

### **3. Some Key Short- to Medium-Term Trade and WTO Issues for China**

China is now facing a number of trade and WTO issues in the short- to medium-term, which affect both her access to foreign markets and the access she gives to foreigners to Chinese

markets. Some of these directly involve WTO disciplines; others are broader reflecting the operation of the wider trading system. If Chinese WTO membership is perceived to yield relatively little help in dealing with these problems, internal political commitment to WTO participation and even domestic policy reform might be weakened. Equally, how China manoeuvres within the WTO process will affect global outcomes, China's future trade performance, and ultimately global economic performance.

### **Textiles and Apparel**

Near the top of the list of key access related issues for China is textiles and apparel trade and the prospective termination of the Multi Fibre Arrangement (MFA). China is now the dominant exporter of apparel items from non-OECD countries; in value terms in 2002 accounting for approximately 45% of non-OECD exports. Today China and India jointly account for the majority of apparel exports from non-OECD to OECD countries<sup>12</sup> with a large number of smaller suppliers in Asia, Eastern Europe, Central and Latin America with small shares of total trade which are still a large fraction of country exports. Sri Lanka, for instance, had 53% of total exports in textiles and apparel products in 2002,<sup>13</sup> and these products were 95% of Bangladesh's and 93% of Laotian manufactured goods exports in 2000.<sup>14</sup>

Since 1974 global trade in textiles and apparel has been restrained by the MFA<sup>15</sup> which followed the original Short and Long-Term Arrangements on Cotton Textiles first negotiated by the US

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<sup>12</sup> See *Leading exporters and importers of clothing, 2002, Table IV.69*, WTO web site. This is in sharp contrast to the 1980s, when Hong Kong, Taiwan and Korea accounted for 60% of such exports.

<sup>13</sup> See *Trade Policy Review: Sri Lanka*, at 87, WTO web site.

<sup>14</sup> See *Evolution of Trade in Textile and Clothing Trade, World-wide Trade Figures and Structural Data* at 12, on Europa web site.

<sup>15</sup> The Arrangement Regarding International Trade in Textiles (the Multi Fibre Arrangement) came into effect on January 1, 1974.

with key Asian exporters (Japan, Hong Kong, Taiwan and Korea) in 1962.<sup>16</sup> After four rounds of MFA renewal were mutually agreed to by both importing and exporting countries WTO members agreed to terminate the MFA at the end of 2004 in the Uruguay Round decisions in 1994, using a complex 10-year transitional process to achieve elimination.<sup>17</sup>

The MFA operates with agreed growth rate quotas on exports, complex rules of origin, transshipment rules, a monitoring and a consultation mechanism (a calls system) and with 44 exporters and eight North American and European importers. By wide agreement, over the years the MFA has slowed and restrained export growth in textile and apparel products, even though export shares from non-OECD countries have increased considerably.

Several issues now arise with its termination which affect all MFA exporters, but are especially critical for China. One is whether free trade will really replace the MFA. Scenarios for a post MFA elimination regime abound from a wave of new antidumping petitions from domestic producers in OECD countries being used to force a new market sharing regime (as happened in steel in the mid-1900s), to the use of safeguards measures (GATT 1994, Article 19) by OECD countries on textile and apparel products.

The view of most developing country exporter countries have been that so far only tokenesque implementation of transitional arrangements by OECD countries has occurred, along with tightening of the application of MFA rules as it is being eliminated. The concerns in the US and

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<sup>16</sup> The Short Term Arrangement on Cotton Textiles was negotiated in 1961, and subsequent a long term arrangement negotiated in 1962. See Nattapong Thongpakde and Wisarn Puppavesa, World Bank, 1999.

<sup>17</sup> A paradox of this outcome was that the MFA was an arrangement mutually agreed to by developing countries that could have unilaterally terminated the agreement by their own decision not to agree to a renewal.

also in the EU over labour adjustment from affected industry groups are clear and strongly stated.<sup>18</sup> A recent piece in *Asian Labour News* for instance, documents pressures in the US for use of new selective MFA transitional safeguards against apparel imports from non-OECD countries.<sup>19</sup>

China's interest is clearly in obtaining unhindered export access in this key area of Chinese trade performance through full access to OECD export markets for textile and apparel exports. The belief is both that exports to OECD countries will grow even more rapidly under free access, and that higher cost production which has relocated to smaller countries in the region because of quotas on Chinese exports will relocate to China. How China deals with these issues both in the WTO and outside could well be critical to China's medium term trade growth. One question is whether China has fresh leverage now that she is inside the WTO which she can use to ensure smooth and effective termination of restraints on these exports? Or is it the case that WTO membership makes little difference to the situation, since China was a MFA member both before and after WTO accession. If the former, can China now more effectively exert her leverage both formally and informally with other interested parties, such as India, so as to act in concert in any subsequent negotiations (such as on market sharing arrangements)? Also, can China use WTO membership to link her position on textiles and apparel to that on other issues, including the remaining implementation of her accession terms? One scenario that has been raised is that China may only agree to new global arrangements in the textiles and apparel area if there is mutual agreement from OECD countries to slow the accession implementation process in such services areas as banking.

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<sup>18</sup> See *The Standard* article, August 2, 2003.

<sup>19</sup> See *Asian Labour News* online article, November 19, 2003.

## Anti-dumping

China also faces many critical challenges in the area of anti-dumping. Around 15% of anti-dumping actions world wide now occur against China, since she is a dynamic grower of exports.<sup>20</sup> In addition, under US statute China is also currently classified as a non-market economy, provoking more stringent application of dumping procedures.<sup>21</sup> China, in turn, has begun to intensify her own use of anti-dumping duties.<sup>22</sup>

One issue China faces in this area is whether, realistically, it makes sense to fight anti-dumping actions if the legal and informational costs are high? *People's Daily* indicates that China had won over 37% of cases in the prior 10 years,<sup>23</sup> but at a high cost in legal fees and other charges. The current view in some circles in China is that if dumping actions against China are narrowly focused on particular products the simplest strategy is simply to respond by producing and

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<sup>20</sup> In the period from July 1, 2002 to June 30, 2003, China was subject to 42 initiations of anti-dumping investigations, out of a total of 238, approx. 17.6%. See *WTO Annual Report 2004, Table 11.5 Exporters Subject to Two or More Initiations of Anti-dumping Investigations 1 July 2002-30 June 2003* at 46 on WTO web site. In the preceding period, China was subject to 46 new initiations of a total 309. See *WTO Annual Report 2003, Table 11.6 Exporters Subject to Two or More Initiations of Anti-dumping Investigations 1 July 2001-30 June 2002* at 83 on WTO web site. From 1995-2001 China was subject to 14% of total global anti-dumping actions (*People's Daily*, April 23, 2002). According to news reports, China has been subject to more than 200 anti-dumping cases since joining the WTO in 2001 (Oliver August, *Times Online*, June 3, 2004).

<sup>21</sup> Article 15 of the protocol on China's accession to the WTO allows other WTO members to treat China as a non-market economy in dumping and subsidy cases for 15 years after its entry. (*China Daily*, May 17, 2004). Under US anti-dumping laws, once a US trade authority deems a country a non-market economy it may disregard the prices of products exported from the country, since they do not reflect supply and demand, and instead use costs in a third surrogate country to calculate dumping margins. At a hearing on June 3/04, the US Commerce Department said US deliberations over whether China is a market-based or state-controlled economy would take at least as long as deliberations over Russia (18 months). See Cheng Dawei, *China Daily*, May 17, 2004, and Doug Palmer, *Reuters*, June 3, 2004.

<sup>22</sup> China initiated 17 anti-dumping actions in the period of July 1, 2002 to June 30, 2003. See *WTO Annual Report 2003, Table 11.5: Summary of Anti-dumping Actions, 1 July 2002 to June 30, 2003*. She initiated no actions in the previous year. China filed 24 anti-dumping cases in the period from 1997 to Sept 2003. See *People's Daily Online*, September 14, 2003.

<sup>23</sup> See *People's Daily Online*, March 29 2002.

exporting other items. But if dumping actions continue against China, at some point the export product range become sufficiently restricted that export performance suffers significantly.

WTO accession formally provides China with little defence against the use of anti-dumping measures against her. Article 6 of GATT 1994 effectively legitimizes the use of anti-dumping measures, and only constrains their use procedurally by specifying how domestic administrative tribunals should determine their use. It is thus hard to claim that WTO membership offers China any significant added benefits in dealing with this major access problem facing continued export growth. China may be able to push more aggressively for anti-dumping reform in the WTO, long seen as unacceptable to the US Congress even after China's WTO accession, but for now this still seems non-negotiable.

## **Services**

In the key service areas of banking, insurance and telecoms, China faces both the task of implementing far reaching commitments entered into in 2001, and of trying to manoeuvre on the access front with few service-related bargaining chips remaining since they were effectively surrendered when she accepted her WTO accession terms. Elsewhere, one of us has discussed these issues and raised questions as to the credibility and implementability of China's commitments in this area.<sup>24</sup>

In banking, China has agreed to remove all geographical restrictions on licences, and also to grant them in a non-discriminatory manner to both domestic and foreign entities, and to extend them to all types of business (including in banking to both domestic and foreign currency

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<sup>24</sup> See Whalley, 2003.

transactions). If fully implemented, these commitments will effectively undermine the present fixed exchange rate Renminbi regime, and also restrain the current practice of using state-owned banks in part as recapitalization agencies for loss generating state-owned enterprises (SOE). There has been speculation that the end of such practice will significantly weaken Chinese trade performance, since effective subsidization of SOEs through these devices has fuelled her trade growth.

In insurance, the main Chinese commitment stands as one to non-discriminatory licensing for insurance providers and to also grant licenses free of any geographical restriction. Foreign negotiators believed at the time of the accession negotiations that this would effectively open the Chinese insurance market to foreign providers, but for now the indications are of more infrequent issuance of licenses to either domestic or foreign providers and hence more cartelization of Chinese insurance markets. In telecoms, the commitments relate again to the use of non-discriminatory licensing combined with significant liberalization in terms of foreign currency.

The WTO challenges for China in these service areas involve both the scope of the commitments and the extent of change they imply for the operation of the Chinese economy. A major and radical change is implied for the Chinese banking system if these commitments are fully implemented, since by 2007 if full implementation occurs, China will have by some measures the most open key service markets of any large global economy. And all of this will have been agreed to with no negotiating *quid pro quo* in terms of access to foreign service markets and with potential significant labour adjustment loss, although these currently appear to be unquantified.

In this area China must try to find a way to implement what seem to be over negotiated commitments, or try to obtain some formal concession in the WTO (perhaps for concession in non-service areas) for slowed implementation of the commitments.

### **Trade Disputes**

China also currently faces a list of trade disputes, of which some have the potential to spawn a significant number of new WTO dispute panels. The list of potential disputes seen from the US is reflected in the latest USTR Foreign Trade Barriers Report. This itemizes import substitution policies in China in several product areas, such as fertilizer; automobile investment guidelines; tariffs on products that compete with sensitive domestic industries, such as motorcycles and electronic equipment; tariff classification and customs valuation procedures; Chinese border policies that give preferential treatment to non-US imports (such as Russian timber);<sup>25</sup> non-tariff barriers to trade in the form of regulations that set entry barriers to trade in services such as banking and insurance; unwarranted inspections of agriculture products; rules on biotechnology products, the use of sanitary and phytosanitary measures to control import volumes; and export subsidies on corn.<sup>26</sup>

Thus far, only one of these disputes has resulted in a formal panel proceeding (the chips case), but others seem poised to be added to the list. China has settled some of her emerging disputes through bilateral accommodation, but the issue for China is how far to move in this direction in accommodating this procedure.

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<sup>25</sup> Russia is not a WTO member and so this practice by China is WTO compatible.

<sup>26</sup> See United States Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers* (2004).

WTO disciplines define clear rights for other WTO members when accessing China's markets for goods, services, and allowing the use of their intellectual property. Whether by more clearly defining such rights accession to the WTO merely adds to the list of disputes and hence the pressure for change in China, or whether the added clarity of rights for other WTO members work to accelerate trade and investment flows is unclear. Free traders typically argue that many or most of the changes that China may be pressured to make under threat of WTO process are anyway in China's interest since they allow China to more fully harness the gains from trade. However, China's developmental strategy thus far has not been fully reflective of an unrestricted market approach, and the more rapid change that is probably implied by the outcome to these disputes may not be seen as policy compatible in China. China has thus to decide whether WTO trade disputes while superficially annoying from a practical view point, in reality help implement the modernization process in China more quickly and are simply a confirmation of the arguments that took China into the WTO in the first place. Or do potential WTO disputes needs add new pressures on China to implement policy changes which she does not yet want to make.

On the offensive side of the trade dispute equation, China has thus far shown considerable reluctance to use her WTO membership to assert her rights. There have been no WTO trade panels initiated by China,<sup>27</sup> although China has been active in pressuring foreign governments on various trade matters such as the use of special safeguards in textiles and apparel in the US,

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<sup>27</sup> Although China was the second of nine members to request a panel against the US on safeguards on imports of certain steel products. See *Request for a Panel against US Imports of Certain Steel Products*, April 2, 2002 on WTO web site.

Japanese farm measures affecting Chinese exports,<sup>28</sup> and EU environmental barriers on Chinese appliance exports.<sup>29</sup>

The one dispute thus far that has resulted in a formal WTO panel against China involves the treatment of imported semiconductor memory chips into the Chinese market. Under the Chinese national value added tax, imported chips are subject to a value-added tax of 17%, but domestically produced chips are eligible for special tax rebates that lower the effective tax rate to between 3% and 6%.<sup>30</sup> The US allegation is that this practice is a violation of National Treatment (GATT 1994, Article 3), and the EU and other suppliers (including Taiwan) have also notified an interest in the case to the WTO.<sup>31</sup>

Other emerging trade dispute issues involving China relate to financing packages offered by foreign auto producers in the Chinese market, which were initially disallowed on the grounds that China had yet to implement its WTO commitments re financial services;<sup>32</sup> and whether the current Renminbi exchange rate is a factor in China's significant trade surplus position and represents a GATT 1994 Article 23 nullification and impairment case.

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<sup>28</sup> See Meng Yan, *China Daily*, June 3, 2003. These complaints relate to a Japanese announcement to block imports of Chinese fowl and eggs in May 2003 after a flue virus was detected in exports originating in Guangdong.

<sup>29</sup> See *People's Daily Online*, Feb 17, 2004. This matter relates to a new EU directive on waste from electronic equipment that will impose a fee of 1 to 20 Euros on any colour TV or mobile phone exported to the EU.

<sup>30</sup> See *The Economist*, January 10, 2004 at 57.

<sup>31</sup> See *China – value-added tax on integrated circuits – Request to Join Consultations, Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*, April 5, 2004 on WTO web site, and *China – value-added tax on integrated circuits – Request to Join Consultations, Communication from the European Communities*, March 30, 2004 on WTO web site.

<sup>32</sup> See Xiao Zhang, *China Daily*, November 14, 2003.

China has recently concluded a bilateral agreement on imports of coking coal from the EU, reflective of an approach of using bilateral accommodation to defuse trade conflicts.<sup>33</sup> China's import quota in this area is to be sharply increased, although not removed as WTO disciplines would seem to imply. This case will likely lead to similar deals with other exporters of coking coal to the Chinese market, and possibly similar deals in other product areas.

### **The Domestic Regulatory Regime**

A final challenge for China which WTO membership implies is the extent of refocusing of the domestic regulatory regime that will be implied in the medium term. Standards issues involving China's trade figure prominently in the USTR Foreign Trade Barriers report and include a lack of transparency in the certification process, lack of coordination among standards bodies and other agencies, burdensome requirements and long processing times for licenses.<sup>34</sup> US companies do claim that achieving certification under China's Compulsory Certification system is time-consuming, difficult and costly, and that they are subject to redundant testing for cosmetics, pharmaceuticals, and several consumer electronic products, inconsistent application of sanitary and phytosanitary measures, and excessive or inappropriate food labeling requirements.

An illustration of these problems is China's Wireless LAN encryption standards, which differ from internationally recognized standards and force international companies to work through the few Chinese manufacturers who possess the necessary algorithm to meet these standards.

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<sup>33</sup> See Dai Yan, *China Daily*, May 31, 2004.

<sup>34</sup> See United States Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers* (2004) at 67-71.

According to Li Zhonghai, director of China's standardization watchdog, China now has 20,900 compulsory national standards covering safety, hygiene and environmental protection with more than 2,300 new national standards under creation. Only 44% of China's standards reflect agreed international standards (also according to Li Zhonghai) and the challenge is to modify remaining standards and elsewhere rewrite domestic regulatory standards. Such standards relate to health, safety, electrical, product liability and other matters. Standards are widely agreed to be a central area of impact of domestic policy regimes on trade, and are little researched. The issues in this area in the Chinese case seem to be quantitatively even larger than those for other economies.

#### **4. Regionalism, China's Trade Policies and the WTO**

It is in the area of regional trade agreements that some of the most central trade issues arise for China with her WTO participation. Thus far, China has formally initiated two regional agreements; an agreement with ASEAN and a bilateral agreement with Hong Kong under a Closer Economic Partnership Agreement (the CEPA),<sup>35</sup> but others seem likely to follow.

The ASEAN agreement concluded in 2002 is a broad framework agreement with a specified bilateral tariff elimination list to be implemented by 2010.<sup>36</sup> This agreement has yet to be finalized and hence to be notified to the WTO, where a working party will have to be established to consider it. *China Daily*, reports that initial negotiations on a China-ASEAN FTA are

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<sup>35</sup> See Mainland and Hong Kong Closer Economic Partnership Arrangement (2003) [CEPA] at Government of the Hong Kong Special Administrative Region, Trade and Industry Department web site.

<sup>36</sup> The Framework Agreement on China-ASEAN Comprehensive Economic Cooperation was signed in November 2002, with a proposed free trade area involving 1.7 billion people. Trade between China and ASEAN in the first 10 months of 2002 alone was worth almost \$43.46 billion (USD), by 2005 this number is expected to reach \$63 billion (USD). See *People's Daily Online*, December 17, 2002.

expected to conclude before June 30 2004,<sup>37</sup> with conclusion of the broad terms of the trade agreement. Current negotiations are focused on rules of origin, trade of goods and trade of services and investment. An early harvest program which was launched Jan. 1, 2004, has resulted in preferential tariffs on more than 500 mostly agricultural goods.<sup>38</sup> Agriculture, information and communication technologies, human resources development, mutual investment and the development of the Mekong River have been identified as priorities for cooperation.

The CEPA agreement is a tariff elimination agreement. Tariff elimination will occur by 2006. The two parties mutually agree to forgo the use of antidumping and countervailing duties against each other. Safeguards are allowed under a prior written notice arrangement. It also has significant additional provisions in a number of areas. One is in financial services since it allows Hong Kong banks to acquire ownership and control of Chinese banks, and through foreign acquisition of Hong Kong banks potentially provides for foreign entry to the Chinese banking market. The CEPA commits the mainland and the Hong Kong Special Administrative Region to progressive removal of bilateral service trade restrictions.

The provisions in the financial cooperation provisions (Article 13 of CEPA) support mainland banks in developing network and business activities in Hong Kong and the “full utilization of financial intermediaries in Hong Kong during the process of reform, restructuring and development of the financial sector in the Mainland.”<sup>39</sup> There is agreement on cooperation in

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<sup>37</sup> See Dai Yan, *China Daily*, May 21, 2004.

<sup>38</sup> See Dai Yan, *China Daily*, May 21, 2004.

<sup>39</sup> CEPA, article 13, section 3.

tourism and mutual recognition of professional qualifications, and trade and investment facilitation.

Compared to recent regional trade agreements involving OECD countries, the CEPA is notable for its brevity (and hence some potentially significant degree of vagueness), and its absence of an additional dispute resolution mechanism beyond what WTO process implies. Disputes are to be resolved “through consultation in spirit of friendship and cooperation,”<sup>40</sup> and all decisions of the CEPA steering committee are to be by consensus.

The CEPA has been notified to the WTO, even though China and Hong Kong are two separate WTO members. As the first regional agreement to be concluded by China, this seemingly sets the precedent for others that will follow, including potentially for some parts of the China-ASEAN agreement. Other possible regional partners for China include Korea, Australia - New Zealand, India and even Japan.

On other fronts, the *Financial Times* reported in 2003 that China and India have agreed to coordinate their WTO positions on a range of issues including essential medicines, agriculture and investment.<sup>41</sup> In June 2003, the Indian Prime Minister visited China and agreed to form a joint working party to study bilateral economic cooperation and lay the way for a possible bilateral free trade agreement.<sup>42</sup> Australia and China have jointly released an Australia-China

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<sup>40</sup> CEPA agreement, article 19 “Institutional arrangements”, section 5.

<sup>41</sup> See Guy de Jonquieres, *Financial Times*, July 1, 2003.

<sup>42</sup> See Michael Vatikiotis and Murray Hiebert. *Far Eastern Economic Review*. April 29, 2004.

Free Trade Agreement Feasibility Study,<sup>43</sup> Singapore has begun talks on a free trade deal with China,<sup>44</sup> New Zealand has agreed to a formal bilateral trade framework with China,<sup>45</sup> and China, Japan and South Korea have met to discuss regional trade issues.<sup>46</sup>

For China, as for the US and the EU, the incentive is to adhere to strong multilateral WTO disciplines as a way of securing access to larger markets on non discriminatory terms, while seeking regional arrangements going beyond WTO rules with smaller entities giving China preferential regional access to smaller markets. The current US regional agreements stress preferential access in services, while EU agreements stress partnership and commonality in legal structure. As a large manufactured goods exporter, China's regional agreements for now stress preferential access in these areas, and so the structure of China's regional agreements will likely continue to differ significantly from those of other large trade entities. Cultural differences will also be reflected in such areas as dispute settlement, where Asian consensus will likely be stressed. For China, however, the issue will remain one of balance between WTO and regional trade objectives.

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<sup>43</sup> See *Australia-China Free Trade Agreement Feasibility Study*, Australian Department of Foreign Affairs and Trade web site.

<sup>44</sup> See Chen Qide, *China Daily*, March 1, 2004.

<sup>45</sup> See Colin James, *Far Eastern Review*, April 22, 2004, at 20.

<sup>46</sup> See *Jiji Press, English News Service*, June 8, 2004 and Shawn Donnan and Andrew Ward, *Financial Times*, October 8, 2003.

## **5. China, the Doha Round, Trade Relations with Other Emerging Large Middle Income Powers and Global Architecture**

While China is now a key player in the WTO process China is not alone in both having negotiating power and being able to exercise this in her own interests in WTO process. How far China goes in exercising her influence jointly with other emerging middle income powers, such as India, Brazil and Indonesia, and powers yet to join the WTO such as Russia will be important.

On the one hand, these are economies in competition with China for export growth driven access to large markets in the EU and the US. But on the other hand the commonality of interest suggests that substantial opportunities exist for collaborative activity between China and these other countries, both within the WTO and outside. These are also more rapidly growing markets than in the OECD and increasingly are areas of significant export importance to China.

In the short term, Chinese interests in the WTO Doha Round are key. Optimism or pessimism on its outcome will play a role, as will China's interest in exercising leadership among the emerging large middle income powers in its conclusion. Agriculture and the export subsidization issue, until recently dividing the EU and the US, is one issue. But issues of implementation of Uruguay Round decisions preoccupying smaller and poorer countries, and associated matters of clarifying the interpretation of special and differential treatment also arise.

China is also a country with a large rapidly-growing economy effectively outside of the global institutional apparatus of the WTO, the World Bank, and the IMF for nearly 50 years and formally joining this structure in 2001. For now China has been content to observe and move

cautiously, but over time fundamental issues will arise for China as to how accepting she should be of this structure and where and how rapidly she should push for change, and with whom.

The WTO/WB/IMF triad to a large degree reflects the response of the US and the European powers to the immediate post-World War II concerns of achieving international economic stability and laying the preconditions for growth in the immediate post-1945 period. The aim was to prevent a return to the 1930s and the depression and economic dislocation that occurred (especially in Central Europe) after the First World War. The IMF was to guarantee a fixed exchange rate regime, the World Bank was to yield concessional financing for infrastructure in developing countries, and the ITO (and later the GATT and the WTO) was to be the vehicle to establish rules for the use of trade policy so as to facilitate trade growth globally.

But the world of today is no longer that of the 1940s, and while these agencies have changed over the years, whether they fully respond to the global challenges of today, especially as seen by China, is key. Longer term the issue for China and even now after only recently acceding to the WTO, is whether she should also be a prime global mover for a wholly new and reformed global institutional economic architecture?

Such an architecture could concentrate on issues of major concern to China more effectively than global institutions do at present. One area is that of global labour mobility, with restrictions in OECD countries on the free flow of cheap Chinese labour abroad. Another is the issue of certification procedures for the use of considerably cheaper Chinese services (medical services in

China for instance) in place of OECD service provisions. Other key issues involve the environment, anti-trust, banking regulation and how they are dealt with globally.

## **6. Concluding Remarks**

The paper looks beyond recent debate both in and outside China as to both the merits of and possible impacts from China's accession to the WTO (to be implemented between 2002 and 2007), and discusses China's stance in the WTO in the post accession period. China is now in the WTO; how to use WTO membership to serve China's trade interest is the issue, not an accession process already negotiated. Chinese growth has already changed the global economy, and our belief is that Chinese membership of the WTO will ultimately change both global economic performance and the shape of global economic institutions. We are at the start of this process, and here we try to raise a series of issues for wider debate.

Chinese is so large in population terms and, along with India, growing so rapidly that change in the global economy is now reflective of what is happening in China. Trade is a central part of this change, how China responds to the challenges she faces both in the WTO and outside it will affect future global performance and is of importance to us all, whether inside or outside China. We ask how much difference formal WTO membership realistically makes to China's conduct of commercial diplomacy, especially in key areas such as textiles and apparel, anti-dumping, and handling emerging trade disputes. We also ask what this implies for China's interests in possible new global economic architecture.

China now stands in contrast to nearly all the major economic powers in seemingly building its latest developmental strategy around her accession to the WTO and implementation of accession terms. Outside China, the WTO does not enter domestic policy formation in this central way and there is much pessimism as to the WTO's prospects. On access issues, seemingly the WTO yields China less than the rhetoric of Chinese accession suggested and China's new found regional strategy is in part a manifestation of this. Whether the WTO will occupy the same central role in Chinese policy making in future years thus now seems to be in doubt.

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