

**Economic Relations after China's Accession to the WTO:  
An American Perspective on Shared Goals & Challenges Confronting  
the United States and the European Union**

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## **Introduction**

By almost all accounts, the bilateral deals reached by China and the United States and China and the European Union entail a number of sweeping market liberalizing reforms on the part of the Chinese. In a number of sectors, China has agreed to open up its markets and subject its enterprises to increased foreign competition.

The focus of my comments, though, will be on the challenges that lie ahead after China's accession. These challenges are ones that both the United States and the European Union face, although both parties will likely handle them differently for reasons I will outline below. In short, there is the common perception in the United States, but only partially correct, that the EU 'free-rides' on U.S. China policy. This is to say that the EU has the same concerns that the US has, but will let Washington take the leading in pressuring China for reform, whether economic or political.

## **Transparency & Administrative Reform: The True Challenges**

Though market access concessions--tariff reduction and sectoral liberalization--are important for China's bid for WTO membership, the real future challenges for China and the WTO revolve around issues related to "transparency," or the legal and administrative policies and institutions that the PRC must put in place to ensure the equitable and efficient resolution of commercial and trade disputes.

My concern regarding transparency and administered protection issues is heightened by the sweeping nature of the package of reform China has offered--and to my skepticism concerning the ability of China, even with the best of intentions, to deliver on key elements of this package. Market liberalization on the scale promised by China as the price of WTO membership will undoubtedly increase the efficiency and productivity of the Chinese economy in the long run; but in the short and medium term, these reforms will force a massive overhaul of the Chinese economic system and create enormous social and political pressures on China's government and ruling party.

Unfortunately, with so much attention and negotiating energy devoted to market access and contingency protection against import surges, little or not attention has been paid to provisions in the Protocol of Accession that would mandate change and reform in the Chinese commercial law and administrative procedures as a condition of WTO

membership. The EU is guilty of this too, by focusing, for example, on the number of licenses for insurance operators that China will issue.

At the core of the difficulties facing both China and the WTO in fulfilling the obligations for Chinese WTO membership is the rudimentary state of its administrative law system, and the lack of an objective and equitable system of judicial review from administrative decisions. U.S. Trade Representative Charlene Barshefsky highlighted this fundamental problem when she admitted after signing the bilateral accession agreement with China that: "Look, we're trying to fit a square peg into a round hole...What are the hallmarks of the world trading system. The rule of law and transparency. China doesn't have either one."<sup>1</sup>

First, the very general nature of Chinese laws and regulations means that is impossible to determine a legal or practical response without access to the specific administrative rule. Further, another consequence of the overbroad legislative directions is a high degree of discretion given to Chinese officials in administering commercial laws--and no compulsion to provide the rationale behind a particular action.

For these reasons, I argue that the final Protocol of Accession for China's WTO membership voted upon by all 135 WTO members should include a detailed blueprint for fundamental changes in China's current legal and administrative system, as well as special procedures for dealing with import surges (antidumping and safeguards actions).

#### **Antidumping & Special Safeguard Abuses**

The above recommendations are made because I think that the options are clear: either China agrees to create and implement a rules-based, legally tighter administrative system which command the respect and trust of the international trading community or "managed trade" solutions--targeted import quotas, market share mandates--will be sanctioned by the WTO and implemented by individual nations for years to come. We have already seen some evidence of this as the United States has negotiated into the bilateral unfortunate provisions regarding antidumping and special safeguards.

<sup>1</sup> Jim Mann, "Getting China to Adhere to Trade Deal Next Hurdle," *Los Angeles Times*, November 17, 1999, p. 1.

Both the dumping and the safeguards provisions forced upon China by the U.S. negotiators are retrograde, but from a systemic perspective the anti-dumping regime is by far most damaging of the two means of dealing with import surges. The problem is that European Union officials might attempt to join the bandwagon and apply similar procedures (Mexico is arguing that they should have these options as well).

Why are both retrograde? There are two reasons, one external to China (and other transition economies later if the same systems are put in place), and one internal to China. In both cases, the long transition period (fifteen years for anti-dumping and twelve years for safeguards) will mean that protectionist interests in major WTO countries will become accustomed to the cushion of “managed trade” and lack of competition with Chinese industries. They will move heaven and earth to keep the system in place when the deadline approaches for a more market-oriented approach in the contingent protection area. Second, on the Chinese side, “managing” trade through bureaucratic means sends just the wrong message to government officials who will preside over the export quotas on Chinese companies which will surely result from the safeguards and anti-dumping actions. Old-style Communist “command and control” attitudes will be all the more difficult to eradicate.

That said, use of safeguards actions to deal with import surges is marginally superior to anti-dumping actions. There are two reasons why this is so. First, safeguards actions are based on a system that avoid the inflammatory rhetoric (allegations of “unfairness” and “predatory pricing”) that are inherent in anti-dumping cases. Second, under safeguards, there is no attempt spuriously to compare prices and to measure the amount of dumping associated with particular products. As noted above, even for market economies, most economists severely criticize the techniques used by domestic trade agencies—for NMEs, the necessity to “construct” prices or find a surrogate country simply adds to the arbitrariness and absurdity of the process. Thus, China and other transition economies will fare much better under a safeguards regime than under a system which uses anti-dumping actions as the chief means of rolling back imports.

#### **Question of EU’s Ability to Pressure China**

In the United States, one of the central concerns whenever we consider Europe's relations with China, is the degree to which it attempts to free-ride on US pressure. Broadly speaking, both the EU and the US share the same goal for China; i.e., political and economic reform in the direction of democracy and free-markets, respectively.

On the political front, though, there is the common perception that the EU lets the US bash China on issues ranging from human rights to missile proliferation. Put differently, many in the United States believe that the European Union free-rides on U.S. efforts. I think there is some truth to this but that it varies by country. Some EU members and their citizens have been much more vocal in calling for China to respect human rights than others.

On the economic front, there is probably more cooperation and a sharing of common interests. To be sure, US firms view EU firms as competitors, but I think trade negotiators and government officials clearly recognize that common interest they have in getting China to abide by its WTO obligations.

Having said that, it is probably the case that the US will be more willing to file dispute settlement cases against China than the EU. The reason is twofold. First, the United States has very powerful domestic lobbies that will pressure USTR to file cases. Second, given disunity within the EU, there probably is some reason to believe that it will be difficult to pick which cases to file.

Pursuant to this last point, based largely on the productive interaction that took place at the conference. It was striking to me the diversity and disagreement on issues within the European Union and between member countries. It seems to me that the EU is still a 'work in progress' if you will. It became very clear that China still regards the bilateral relationship with member nations as taking priority over Chinese relations with the EU as a whole. In light of this, it is very clear (at least to this author) that the United States will continue to remain at the forefront of shaping Western policy responses to China, both economically and politically.