



# The United States-China Business Council

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**China's WTO Implementation Efforts:  
An Assessment of the First Nine Months of China's WTO Membership  
Written Testimony by the United States-China Business Council  
Prepared on September 3, 2002**

**Submitted in response to the Office of the USTR's Request for Comments and Notice of  
Hearing Concerning China's Compliance with World Trade Organization (WTO)  
Commitments (Federal Register, Page 45580, 7/9/02)**

The United States-China Business Council is pleased to provide the Office of the U.S. Trade Representative (USTR) with the following comments and perspectives on China's compliance with its World Trade Organization (WTO) commitments in the first nine months of the country's WTO membership.

Issues related to China's WTO accession have been integral to the U.S.-China Business Council's work for more than a decade as part of its efforts to help member U.S. companies succeed in the China market. The Council has tracked implementation efforts closely since China acceded to the WTO on December 11, 2001 and the Council's WTO Working Group has met quarterly over the past year to discuss progress and problems. This report is not intended to be comprehensive, but rather to highlight for USTR key positive and negative developments of particular significance to the Council, based on close consultation with U.S. member companies in China over the past year and a wide range of other sources.

## **Table of Contents:**

1. Executive Summary
2. Rule of Law Issues and Status of Legal Reform
3. Import and Export Policies
4. Trading Rights and Distribution
5. Investment-Related Measures
6. Standards
7. Intellectual Property Rights
8. Capacity Building
9. Recommendations
10. Conclusion

## **Attachments:**

1. U.S.-China Business Council quarterly reports on China's WTO implementation (6/01-5/02) (business confidential)
2. PRC WTO- related and other legislation (business confidential)
3. Selected foreign-supported WTO training efforts in China (public)

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## 1. Executive Summary

China assumed its obligations as a member of the WTO on December 11, 2001. The scope and breadth of China's market access commitments were comprehensive and far reaching, especially in the area of services. China undertook to liberalize its trade and investment regime, a move that requires a comprehensive overhaul of relevant laws, regulations, and procedures. In many instances, China has had to draft new national-level laws and regulations.

No new WTO members have perfect records of compliance in their first year. China's record in its first nine months has been neither surprising nor exceptionally deficient. Moreover, nine months is too short a period to permit the formation of definitive conclusions about patterns of adherence to WTO norms or specific WTO commitments. But preliminary developments indicate that, with the exception of some anticipated problem areas, China has taken its WTO obligations seriously and is working to adjust its system to meet these obligations. China has made important strides in making its regulatory process more transparent, in meeting the vast requirements of bringing its national laws into WTO conformity, and in opening its market as required under Year One commitments.

At the same time, full compliance with Year One commitments has yet to be achieved. Implementation efforts have been uneven. A raft of problems--few unexpected and few unique to China's accession--have presented themselves in a number of areas including transparency, quota management, standards, taxation, and in the form of newly erected non-tariff barriers.

Early signs suggest that WTO-relevant issues involving entrenched PRC bureaucratic and domestic commercial interests will likely require particular vigilance by the U.S. government and the American private sector, in the interest of effective encouragement of China to reach the fullest possible realization of China's WTO commitments.

### *Positive first steps*

China has taken positive first steps to implement its commitments. Predictably, the greatest measurable successes in China's first nine months of membership have been in the most clearly defined and straightforward areas, such as changes to laws and regulations and tariff reductions.

During these first nine months, China has focused on three areas: amending existing laws and drafting new legislation to comply with WTO rules; restructuring government ministries and agencies to facilitate legislative and administrative changes in line with WTO disciplines; and training and educating on WTO rules and practices.

The provisions of a large number of new and amended laws that have been adopted since December 2001 have brought many areas of China's trade and investment regimes into line with WTO obligations and demonstrate the seriousness with which the PRC government has approached the challenge of WTO compliance. The average tariff rate has fallen from 15.3 percent to 12 percent since accession. China has, in addition, moved to open heretofore-closed operations in banking, securities, and distribution, and has regularized approval procedures for a range of sectors including legal, financial, telecommunications, and human resources services.

### *Early problems*

China's WTO implementation has been hindered in some areas either by an apparent lack of technical and personnel capacity or by attempts by entrenched interests to stall on some of China's most sensitive commitments. Matching WTO-driven legal innovations with sufficient technical and human resources will remain a major PRC government challenge for many years to come.

While China has managed, during the first nine months of implementation, to issue many critical new regulations and reach a number of needed decisions on time, it has not handled all its important WTO commitments with appropriate punctuality.

Most notably, China missed deadlines over the past nine months for allocation of its agricultural and industrial quotas and tariff rate quotas. Unofficially, China has said that such failures of punctuality will not be repeated in subsequent years. The Council understands that new rules for 2003 quotas are clearer, but quota allocation will need to be closely watched to ensure the 2003 process will be smoother.

Systemic changes and changes in service sectors with longer phase-ins are still in flux. While still in the early days of implementation, there are also emerging signs that some new practices promulgated since accession at the central level have been designed with discriminatory and trade-restrictive intent. Such practices include the imposition of new and excessively restrictive standards, cumbersome licensing procedures, and high capital requirements to establish and branch. Each of these practices has made its appearance in multiple sectors in China's economy since the beginning of 2002.

### *Recommendations*

Looking to the second year of China's WTO membership, the U.S.-China Business Council encourages the Office of the USTR to work with its counterparts in China through bilateral consultations and through the multilateral process in Geneva to ensure that implementation occurs completely and on time on all fronts. The Council encourages USTR to press the PRC government on lack of transparency, delays in implementation, the introduction of new measures that restrict market access, and other areas of non-compliance as they occur.

Please see section nine for a full discussion of the U.S.-China Business Council's recommendations.

## **2. Rule of Law Issues and Status of Legal Reform**

### *Many new laws and regulations in place . . .*

China has since December 2001 made great strides in adopting a broad array of new and amended laws compatible with its WTO membership. As early as mid-2000 the PRC's central leadership announced that it had launched a top-down review of all laws and regulations to determine their compatibility with WTO commitments. The State Council reportedly reviewed regulations issued by 35 ministries and bureaus, and each industry, headed by a relevant ministry or bureau, was also responsible for conducting its own legal review. China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) announced in May 2002 that more than 2,300 laws and regulations had been amended to comply with WTO rules and 830 abolished.

*... And new agencies created and unified ...*

As required under its WTO commitments, MOFTEC launched its China WTO Notification Inquiry Center in Beijing on a trial basis on January 14, 2002. The State Administration for Entry-Exit Inspection and Quarantine (CIQ) merged with the State Technical Supervision Bureau (TSB) on April 1, 2001 to form the State Bureau of Quality, Supervision, Inspection and Quarantine (SBQSIQ). This merger met the demand of its WTO negotiating partners that China unify its inspection regime that previously had one regime for imports, CIQ, and one for exports, TSB, to ensure national treatment for imported goods.

*... But gaps remain*

Despite progress in passing new laws, it is important to note that legal and regulatory gaps remain as China prepares to phase-in Year Two and Year Three commitments. China still needs to introduce new regulations to detail how market access commitments will be granted in sectors including distribution, retail and direct selling, and telecommunications, to name just a few.

#### *Uneven levels of transparency*

China has taken steps to institute a more transparent and consistent regulatory process by requiring all new and amended regulations to be published 30 days before their implementation and allowing (but not requiring) government agencies to solicit comments on draft regulations. China has, for the first time, circulated for comment draft regulations on trade and investment as required by its WTO commitments, though comment periods to date have been impracticably short and not all agencies have proven equally transparent and forthcoming. The People's Bank of China and the China Securities Regulatory Commission have been among the most progressive in releasing regulations with sufficient time to comment. The Ministry of Communications was among the first ministries to post draft regulations for comments in both English and Chinese on its website; it was also among the few ministries to allow a reasonable comment period--in this case, of three weeks. The opportunity to comment does not, of course, guarantee that the concerns expressed by affected parties, including international businesses, are addressed in final versions of China laws and regulations. This will be an important trend to monitor in Year Two. Though some government agencies appear to be reaching out to the foreign business community, there is not yet a uniform mechanism for the solicitation of both domestic and foreign business comment on pending legislation and regulations. The Council continues to hear reports of regulators sharing drafts of legislation only with domestic companies, not foreign companies, or at best with only a select group of foreign companies.

### **3. Import and Export Policies**

#### *Tariffs*

China has done a good job of implementing its tariff reductions. The PRC General Administration of Customs (GAC) officials received and began to implement China's new tariff schedule at midnight on December 31, 2001. Reductions occurred in 70 percent of all tariff categories; 60 percent of product categories will reach their final bound tariff rate this year. The PRC 2002 tariff schedule was published in both Chinese and English, thereby meeting China's commitment to publish all trade-related rules and regulations within 90 days of implementation. China also implemented most of its Information Technology Agreement (ITA) tariff commitments on January 1, 2002.

Despite this mostly positive record, China has yet to eliminate tariffs on certain semiconductor and telecommunications equipment inputs bound for the domestic market. China is also continuing to require end-use certificates for these products, a requirement that foreign companies view as discriminatory.

Early indications suggest that changes in China's customs regulations to date have effectively moved China into compliance with WTO obligations. Amendments to China's customs law took effect on January 1, 2001. China's commitment to use transaction value in the amended law brings PRC valuation practices closer to those outlined in the WTO Customs Valuation Agreement, to which China has committed. New customs regulations took effect January 1, 2002 that aim to make transparent the method Customs uses to calculate the dutiable value of imported and exported goods. The regulations also allow trading companies to apply for a ruling on classification questions up to three months before goods are imported or exported, and waive tariffs and simplify the import process for temporarily imported goods.

Tariff rate calculation and valuation methods, however, continue to discriminate against targeted imported products. For example, China is selectively using a calculation method to shift components into a tariff classification with higher duty rates if domestic assembly does not include a certain level of local content.

### *Tax*

China's uneven application of the value-added, consumption, and border taxes continues to discriminate against exports to China. These tax rates act as a non-tariff barrier and contravene WTO national treatment provisions. China is continuing to practice tax discrimination on a number of import categories through the calculation of tax rates. Authorities use a different base to calculate the consumption tax payable for imports than that used for locally produced cigarettes, cosmetics, distilled spirits, skin and hair care preparations, jewelry, fireworks, rubber, cigarettes, motorcycles, and automobiles. Thus imports of these products bear a tax burden twice as high as domestic products. The VAT payment for imports is also based on this inflated number. China furthermore continues to adhere to discriminatory tax policies in the area of border trade for certain products such as boric acid for which the general customs duty and VAT rates are half the amount for Russian imports than they are for imports from non-border countries.

### *Quotas and tariff rate quotas*

Perhaps the most conspicuous example of insufficient implementation of WTO commitments in China's first year of WTO membership is in quota and tariff rate quota administration. China's administration of tariff rate quotas (TRQs) to date in sectors such as agriculture, fertilizer, and autos raises very serious questions about the PRC government's commitment both to a transparent, fair TRQ system and to liberalization of market access in areas dominated by state trading. While China ultimately released new guidelines on TRQ allocation for comment, the comment period was so short as to be almost without value. China has failed to allocate in a timely fashion 2002 quotas for a number of goods including autos, fertilizer, wheat, corn, wool, and sugar. Quota allocations to non-state-owned enterprises have been too small to be commercially meaningful for U.S. and other exporters. Companies have also reported procedural difficulties in applying for quotas stemming from inadequate transparency of application requirements. Some firms have indicated that certain state trading enterprises are receiving preferential quota allocation from the quota reserved for non-state trading enterprises.

### *Antidumping and safeguard measures*

New antidumping and safeguard legislation took effect in China on January 1, 2002. The regulations represent improvements in that they contain provisions and definitions similar to those employed by other WTO members, but they lack the level of administrative detail necessary to ensure that foreign companies receive fair, consistent, and transparent treatment. Some U.S. companies involved in antidumping cases initiated prior to China's WTO entry report continued improvement in the handling of cases, but are reserving final judgment until after the PRC issues preliminary margin decisions. U.S. companies are concerned about the continued lack of transparency, inadequate protection of confidential information for cases, and provisions for independent review of trade remedy decisions, including determination of which courts will be involved. China is also increasingly willing to use its antidumping laws to protect vulnerable industries, especially chemicals. Eight new cases have been initiated since December 11, 2001 for art paper, catechol, cold-rolled steel, phenol, phthalic anhydride, polyvinyl chloride, styrene butadiene rubber, and toluene di-isocyanate.

## **4. Trading and distribution rights**

China has begun to take steps to implement its commitment to allow both foreign and domestic enterprises to import and export most goods freely within three years of accession. MOFTEC took a small step toward liberalizing trading rights for FIEs with the issuance of the Notice on Relevant Issues of Expanding Import and Export Management Rights of FIEs. The restricted scope of the rules, however, leaves significant gaps in China's trading rights regime. China also introduced new rules in December 2001 that lifted restrictions that had prevented FIEs in the free-trade zones (FTZs) from establishing offices outside the zones. The notice allows an FIE in an FTZ to establish offices outside the FTZ to perform liaison work under the parent FIE's business scope. Liaison offices will enable FIEs to establish distribution networks across the country in preparation for the phase-in of distribution rights. The State Economic and Trade Commission in July 2001 approved the first wholesale enterprise with foreign investment in China; in what appears to be a pilot case, the Shanghai No. 1 Department Store (Group) Co. Ltd. opened a wholesale joint venture with Japan's Marubeni Co. in Shanghai in August 2001. Procedures that will allow foreign companies to sell imported products alongside those they produce in China have yet to be defined.

Despite these limited moves toward liberalization, information on this process has not been made available, and the information that is available is troubling. The Notice on Relevant Issues Regarding the Experimental Establishment of Foreign-Invested Logistics Companies, which took effect August 24, 2002, imposes high capital requirements--a key concern for smaller operators and a provision that could limit partner selection. The imposition in this notice of geographic restrictions appears to be inconsistent with China's distribution commitments. With the full opening of opportunities for foreign joint ventures in commissioning agents and wholesale business set for December 11, 2002, it is important that the Chinese government publish information and relevant regulations on this sector without delay.

The Council is also watching for signs that China is moving toward the reinstatement of direct selling (defined in China's WTO commitments as "sales away from a fixed location") for both multi-level and single-level structures by no later than December 11, 2004. While not yet WTO inconsistent (since phase-ins are not required until the end of Year Three), new rules introduced in the spring of 2002 further restrict the ability of direct selling firms to operate in China and step back from, not toward, further opening.

## 5. Investment-Related Measures

### *Progress in some areas*

China revised many of its foreign-investment laws, and in several instances, new legislation allows foreign investment for the very first time, in line with China's WTO commitments, in areas such as travel agencies, human resources companies, cinemas, railway cargo, and publications distribution. Several Council companies report that they have had better access to government agencies and officials and that it has become easier to schedule meetings and voice concerns on trade- and investment-related questions since China joined the WTO.

The PRC government has also embarked on an effort to shift away from an operational role in commercial activities to a more detached, regulatory one. For example, the State Administration for Industry and Commerce (SAIC) revised business-license procedures for FIEs, eliminating the mandatory annual review of business licenses effective January 1, 2001. The State Development Planning Commission (SDPC) announced in November 2001 the repeal of some administrative approval requirements for projects in urban infrastructure, agriculture, entertainment, real estate, and trade infrastructure.

### *Other key areas pose concerns*

As the following sub-sections outline in greater detail, China has made great strides in the raft of new investment legislation introduced since December 11, but new provisions and outdated practices continue to hamper market access.

### *Revised FIE regulations*

China revised its foreign investment laws for equity joint ventures and wholly foreign owned firms in the spring of 2001 in anticipation of WTO entry. The new language eliminates requirements on foreign exchange balancing, domestic sourcing, advanced technology, and export quotas as a condition of FIE investment. The Council is aware of numerous instances in which the Chinese government continues to pressure foreign firms on trade-related investment measures such as export performance and local content requirements, however, in violation of its WTO commitments.

China's revised Catalogue Guiding Foreign Investment in Industry and its Regulation on Guiding Foreign Investment Direction, both of which took effect on April 1, 2002, generally conform to China's WTO commitments but they do not detail how the PRC government plans to phase in specific business scope, geographic, and quantitative commitments. And though the catalogue encourages development of new and high-technology agricultural products, it now explicitly prohibits foreign investment in the genetically modified crop development and seed business, which represents a step backward from liberalization.

Competition among regions in China is prompting coastal cities such as Shenzhen and Shanghai unilaterally to attempt to accelerate WTO commitments for foreign firms in their jurisdictions in areas such as distribution and procurement. Accelerating the phase-in of China's commitments earlier than required is welcome and should be encouraged. The process to date has not been transparent, however, and there are no details from either the central government or the localities involved about how foreign firms can fairly participate in these advance openings.

### *New FIE regulations in services*

Regulations issued to date in such service sectors as banking, insurance, auto finance, logistics, and telecommunications, institute unreasonably high capital requirements and burdensome licensing and re-licensing requirements to establish and branch. These provisions effectively limit partner selection and expansion of existing operations, two key commitment areas that China pledged to liberalize. Lack of clear regulations and requirements in certain sectors, most notably telecom services, continue to pose concerns for service firms. Newly imposed restrictions on express mail threaten to roll back existing market provisions and highlight the inability of the central government to adjudicate entrenched ministerial protectionism and infighting. There is a growing body of anecdotal evidence that China is forcing companies in newly opened service sectors such as finance and logistics to partner with Chinese counterparts designated by the Chinese government, rather than with Chinese firms they would select based on their own evaluations.

#### *Banking*

A number of foreign banks have received licenses to operate in areas liberalized under China's WTO commitments. Foreign investment in foreign currency services was allowed upon WTO entry nationwide, and foreign or joint venture banks including Bank of East Asia, Citibank, Hang Seng, HSBC, Standard Chartered, and Xiamen International Bank have received licenses. The right to offer *renminbi* lending to foreign companies and individuals has been expanded to include Dalian and Tianjin from the pilot programs in Guangdong and Shanghai. Several Japanese and South Korean banks have applications pending or have been approved to provide *renminbi* services in Dalian and Tianjin.

There has been some progress on the regulatory front. China released provisional leasing rules in August 2001 that correspond with the PRC commitment to allow foreign-owned banks to engage in financial leasing when domestic banks receive such permission. The rules allow for the establishment of both financial and non-financial foreign invested leasing companies [the People's Bank of China had issued Management measures on Financial Leasing Companies on June 30, 2000]. Provisional Rules on Open-Ended Mutual Funds are also promising as they signal the introduction of a new investment vehicle in China. Several foreign companies have announced cooperative agreements with Chinese partners under the new rules. New rules took effect in July 2002 for Chinese foreign joint securities firms and the management of FIE fund management companies. The new regulations allow qualifying foreign companies to invest up to 33 percent in securities companies and fund management companies, and increase equity up to 49 percent in fund management companies by the end of 2004.

Other new regulations, however, threaten to impede the expansion of foreign banking in China. People's Bank of China regulations issued in late January 2002 conform to the wording of China's WTO agreement, under which China may impose non-prudential restrictions on ownership and operation for up to five years after entry. But the regulations severely affect market expansion by limiting foreign-funded financial institutions to the establishment of one branch entity per year and by charging high licensing fees for each branch. New moves to restrict interbank lending severely limit the potential funding activity of foreign banks by restricting their access to *renminbi*.

### *Insurance*

The China Insurance Regulatory Commission (CIRC) approved seven foreign insurers on December 13, 2001, just following China's WTO entry, to set up or to expand their foreign insurance business operations in China. They are New York Life Insurance, Metropolitan Life Insurance, Nippon Life Insurance, Sun Life Insurance, Tokio Marine and Fire Insurance, Manulife-Sinochem Life Insurance, and American International Group. This was the first time that New York Life, Metropolitan Life, and Nippon Life obtained approval for insurance operating licenses in China. American International Group, Inc. (AIG) received final authorization to launch wholly foreign-owned branches in Beijing and Suzhou. ACE-INA gained market access through a significant investment into existing PRC insurer Huatai. And Sun Life Everbright Life Insurance Co. Ltd. began selling policies in Tianjin in June 2002. The openings in Beijing, Suzhou, and Tianjin signal a two-year acceleration of WTO commitments. These cities are now technically open to foreign insurers.

Several other U.S. companies have applied under the new rules and their licensing is pending. The Council will continue to monitor this process to ensure that China adheres to its WTO market access commitments in insurance.

Developments on the regulatory front have been mixed. China's State Council has approved amendments to the 1995 Insurance Law and China's legislature is on track to ratify these amendments later this year. CIRC issued four new insurance regulations since joining the WTO that cover foreign insurance companies, insurance appraisal institutions, insurance brokerage companies, and insurance agency institutions. It is a credit to CIRC that these regulations were released well in advance of the phase-in dates for market access. But capital requirements are high and it is not clear how capital requirements apply to branches, especially for firms already established in the market. While it remains too early to judge whether they will be a market barrier in practice, licensing and re-licensing procedures appear to be unnecessarily burdensome.

### *Telecommunications*

On December 11, 2001 China repealed two regulations that had prevented foreign investment in telecommunications and promulgated new provisions that permit foreign investment in the telecom sector in the form of a Chinese-foreign equity joint venture. The regulations align foreign investment requirements with China's Year One WTO commitments and allow for the gradual lifting of equity and geographic restrictions in accordance with China's WTO commitments. The regulations call for high registered capital requirements, which, as in other sectors, place a heavy burden on foreign firms and potentially limit partner options. Foreign telecommunications firms are concerned about the Ministry of Information Industry's ability to act as a truly independent regulator, and about the absence of a competitive national legal framework for telecommunications. Whether foreign firms gain access to gateways and equal opportunity to offer the same value-added services as domestic firms will be important areas to watch. Licensing to date of new telecom service ventures appears to have stalled. In the coming year, the Council is watching for licensing of new ventures and the expansion of existing ones so that U.S. companies can take advantage of these new regulatory openings.

### *Express Mail*

Recent directives threaten to restrict severely the business of international express delivery companies in China. China Post has proposed a domestic monopoly for delivery of mail under 500 grams. At the same time, the PRC has required foreign express services firms to register with China Post for "entrustment" so that they can carry packages *over* 500 grams. The Council views this situation with great concern, and considers it a major test of China's intentions and ability to implement several basic WTO requirements: non-discrimination, national treatment, and the no-rollback ("grandfathering") provision of China's services commitments. Final details on this issue have yet to be sorted out as of late August 2002, and the lack of progress is cause for concern.

### *Legal services*

China enacted a new regulation on foreign law firms in January 2002 and issued implementing rules in July 2002 that allow foreign law firms to establish profit-making offices to provide legal services. Foreign law firms may provide services to foreign and domestic clients on international legal issues; maintain long-term entrustment relationships with Chinese law firms; and entrust Chinese law firms to handle the domestic legal affairs of their foreign clients. The regulations define a narrow scope and lengthy restriction and re-registration process, however, to the dismay of the foreign legal community in China.

## **6. Standards**

China unified its standards regime in the spring of 2001 by merging the separate inspection agencies for foreign and domestic goods, and unifying its separate certification marks. China also established the WTO Technical Barriers to Trade (TBT) Consulting Enquiry Point to report on standardization requirements to the WTO.

Unfortunately, China has introduced new market access barriers in the form of new standards requirements across a variety of industries including agriculture and autos. Along with quota and TRQ administration, this constitutes a key area of concern. China introduced new regulations in June 2001 and clarifications in March 2002 that raise barriers to imports of genetically modified agricultural (GMO) products. PRC authorities established a temporary certification process in March 2002 that should have facilitated resumption of soybean imports on a shipment by shipment basis, but shipments continue to face problems at port. In addition, GMO corn shipments have reportedly been halted because safety certificates have yet to be issued. In the meantime, importers await the implementation of the full inspection and approval process called for under the State Council's restrictive 2001 regulation and the Ministry of Agriculture's recent implementing regulations.

Separately, the Ministry of Health has issued opaque regulations on food safety that affect GMOs. China has also reported to the WTO Secretariat on new standards for fusel oil, cotton, fertilizer, and chicken, which establish new market access barriers.

## **7. Intellectual Property Rights (IPR)**

China's commitment to abide by the WTO Agreement on Trade-Related Aspects of the Intellectual Property Rights (TRIPs) upon accession has prompted Beijing to review PRC

intellectual property rights laws. China's amended Patent Law and its implementing rules took effect on July 1, 2001. The law streamlines the patent application process, standardizes patent infringement penalties, simplifies enforcement procedures, and shifts the burden of proof to defendants in patent infringement cases. Other amended IPR laws and regulations include computer software, copyright, trademark, and criminal enforcement on counterfeiting. Customs regulations are expected sometime this fall.

Progress in improving IPR protection remains slow, and has shown no particular change in direction since WTO accession. While China's IPR regulatory system is fairly comprehensive and the country has made further efforts to improve its regulatory regime, China continues to fail massively in enforcing its own domestic legislation and regulations. Counterfeits represent a growing percentage of China's export of industrial and light consumer goods, further magnifying the problem. Resources are inadequate, judicial interpretations are unclear or too complex for localities to implement, and few criminal prosecutions are initiated. Penalties are too often too slight to deter offenders.

## **8. Capacity Building**

One of the most positive yet underreported stories about China's WTO compliance efforts is the extensive array of training programs that have been underway since late 1999 at the central, provincial, and municipal government levels. Many key personnel have attended at least one one-week course on the WTO. Some senior-level officials have attended month-long courses that cover WTO-related issues, including background on the WTO, information on WTO agreements, and the impact of China's WTO accession on key industries. Courses for the most senior-level officials have covered the actual terms contained in China's bilateral market-access agreements and in its protocol of accession. The complete terms of China's WTO commitments were not publicly announced until after China's accession in December 2001. On the 26<sup>th</sup> of that month, two weeks after China's formal accession to the WTO, MOFTEC posted its official Chinese-language translation of China's WTO accession documents on its site at [www.moftec.gov.cn](http://www.moftec.gov.cn).

China's SETC is among the ministries and commissions that has launched WTO training programs and detailed explanatory briefings for central and local officials and enterprise managers. The Shanghai WTO Affairs Consulting Center, an organization created by the Shanghai municipal government and MOFTEC to serve as a bridge between business and government in Shanghai, launched the 336 Program to train 100 government officials and 100 people chosen from 300 applicants from society at large -- companies, universities, etc. The program involves 3 months of basic training, followed by 3 months of more specialized training, and 6 months of intern projects abroad. Beijing, Guangdong, Jiangsu, and Zhejiang have all established similar WTO centers over the past year.

The U.S.-China Business Council has cooperated on several WTO-related training projects with the Shanghai WTO Affairs Consulting Center. A series of digital videoconferences linking U.S. experts in Washington, DC, with the Center's trainees in Shanghai has brought U.S. expertise directly to officials and legal personnel whose future responsibilities will be closely linked to China's WTO behavior. To date, topics have included antidumping, TRIPs, technical barriers to trade, and agriculture. DVC facilities for this program have been made available by the U.S. Consulate General in Shanghai and the U.S. Department of State in Washington, DC. Senior-level Council staff have also made speeches in numerous Chinese cities and provinces to a wide

range of government leaders on the WTO. U.S. companies are also engaged in their own efforts to train PRC regulators, joint-venture partners, suppliers, and customers on WTO rules and obligations.

## 9. Recommendations

- ***Ensure that comprehensive implementation progresses in a smooth and timely manner.***  
Looking to the second year of China's WTO membership, the U.S.-China Business Council encourages the Office of the USTR to work with its counterparts in China through bilateral consultations and through the multilateral process in Geneva, to ensure that comprehensive implementation progresses in a smooth and timely manner. The Council encourages USTR to utilize existing bilateral frameworks to push for market access and to build capacity and to look to new modalities that may be necessary to address the complex set of cross-sector issues that WTO accession raises. WTO implementation requires changes that will diminish the powers and resources of some ministries. Thus, U.S. private sector and government advocates will likely need to concentrate their efforts at very high levels of Chinese government authority when implementation difficulties arise from paralyzing intra-bureaucratic tensions, entrenched local interests, and the inappropriate protection of domestic monopolies. The ability of the PRC government to bring the MII and China Post into compliance on express mail services is an important test case in this regard.
- ***Realize the implementation of services rights on time and in full.***  
In particular, the Council encourages the Office of the USTR to work with the PRC government to realize the implementation of service rights on time and in full, as these commitments have the greatest multiplier effect across all aspects of China's economy and potentially serve to bring the greatest benefit to U.S. firms, and in fact all firms in China.
- ***Pay close attention to the introduction of distribution and trading rights commitments.***  
The Council urges that great attention be paid to the introduction of distribution and trading rights commitments, which are required to be fully phased in by no later than December 11, 2004. We also encourage a careful review of prudential requirements contained in newly issued regulations to ascertain whether they effectively restrict market access.
- ***Press the PRC government on areas of non-compliance.***  
The Council encourages USTR to continue to press the PRC government on areas of non-compliance including outright delays and lack of transparency as they occur. New regulations and practices that violate the spirit or the letter of China's WTO commitments--such as excessively high capital requirements for establishment and branching of services ventures, delays in quota allocation, and the imposition of country-specific standards, technical requirements, and other non-tariff barriers and trade-related investment measures by ministries at the central level-- should be identified and addressed at the earliest possible moment, with the goal of ensuring their prompt elimination or appropriate modification.

- ***Hold China to its commitments on goods, especially TRQs.***  
 China must be held to its commitments on goods. China's problematic performance in implementing quota and TRQ allocation in 2002 must not be repeated in 2003. The Council notes China's informal assurances that quota and TRQ administration in 2003 will be more orderly and timely. Nevertheless, the Council urges the U.S. government to press with all possible firmness for the transparent, even, and equitable allocations of quotas throughout the coming year and for nondiscriminatory treatment of imported products.
- ***Hold China to its TRIPs commitments.***  
 China should be held to its TRIPs commitments and called upon to devote more resources to the crackdown on widespread counterfeiting and to addressing weaknesses in the system. While American companies fully understand that definitive and lasting improvement in China's IPR protection regime will take time, it is essential that China display clear and consistent progress in the direction of WTO-compatible IPR conduct. U.S. assistance should be made available wherever possible in such areas as training of judges and enforcement at the border and the local level.
- ***Encourage transparency and the development of a Federal Register-type system in China.***  
 Uneven levels of regulatory transparency among ministries require continuous attention by U.S. government representatives, in consultation with affected U.S. companies. The U.S. private sector and government should encourage transparency and work with China toward the development of a regularized printed/online mechanism similar to the U.S. Federal Register model that would provide the opportunity for all firms, both foreign and domestic, to review and comment on draft regulations within a reasonable amount of time, and to receive notification of final regulations from all ministries. The State Council has announced it would establish a website to this end in 2002. They should be encouraged to introduce this service as soon as possible and to include drafts as well as final versions of laws and regulations.
- ***Encourage the adoption of international standards and the dismantling of new barriers.***  
 Special efforts should be given to working with the Chinese to encourage domestic support for the adoption of international standards that might include allowing foreign firms to participate in China's standards bodies. The United States should play as active a role as the European Union, Canada, and Japan in this area. Efforts should also concentrate on dissuading China from erecting new standards requirements that act as barriers to the entry of foreign goods and services. The standards-based barriers of this type that have emerged in 2002 are blatantly protectionist and must be rolled back.
- ***Continue to coordinate among agencies to develop effective approaches and initiatives.***  
 USTR has done an excellent job in encouraging cooperation among U.S. government agencies in its role as the lead of the interagency China WTO group. WTO issues tend to cross many agencies' areas of expertise and jurisdiction. The Council welcomes this effective interagency coordination, which not only strengthens effective monitoring of China's WTO compliance but also improves the coordination of programs of training and technical assistance in key market access areas. To be maximally effective, U.S. government efforts will continue to require the closest possible coordination among USTR and the U.S. departments of Agriculture, Commerce, State and Treasury. The

Council encourages USTR to work with all of these agencies to develop a comprehensive technical assistance program for China that reflects U.S. trade policy priorities.

- ***Ensure that monies are allocated to the most effective initiatives such as CLDP.***  
It is also imperative that the Congress continue to allocate sufficient resources to U.S. government capacity building and training efforts and that the administration use the power within its means to ensure that monies are allocated to the most effective initiatives. With the recent expansion of staff resources at the Commerce Department's China Desk and the placement of new staff by the U.S. Foreign and Commercial Service and State Department at the U.S. Embassy in Beijing, the Council believes that this administration is now well placed to promote commercial rule of law and WTO implementation training in the PRC. Under H.R. 4444, which granted China Permanent Normal Trade Relations (PNTR), Section 512 allows the Secretaries of Commerce and Labor, in consultation with the Secretary of State, to utilize any of the authorities contained in the Foreign Assistance Act of 1961 and the Foreign Service Act of 1980, including the Economic Support Fund (ESF), for commercial and labor rule of law training programs in China. The Council understands that The Commercial Law Development Program (CLDP), a Department of Commerce initiative funded in part by the USAID, has been effective in promoting the economic and political reforms underway around the globe, particularly in the area of Eastern Europe and the Newly Independent States of the former Soviet Union. The Council requests that the administration work to provide the Department of Commerce with the necessary funding to place CLDP advisors and begin CLDP technical assistance in China.
- ***China should avail itself of the obligations and opportunities provided by the TRM.***  
The Council looks to a substantive and meaningful transitional review process (TRM) of China's first-year commitments this fall in Geneva and in subsequent years as a critical part of China's implementation process. Reports of China's current efforts to circumvent the TRM in Geneva are unacceptable. This process is not just an opportunity for members to raise concerns. China should also avail itself of the opportunity provided by the Geneva TRM to respond to the queries of its WTO trade partners and to demonstrate its sustained commitment to making the changes that are required under its WTO obligations.

## **10. Conclusion**

China has devoted enormous resources to the task of governmental and non-governmental behavior modification imposed by the terms of its WTO membership. U.S. businesses, with experience on the ground in China, are as aware as any economic actor in China of the magnitude of China's tasks. At the same time, it was the U.S. business community's insistence on a broad menu of changes in China's trade and investment regime that drove negotiations over China's WTO membership toward their final form, especially in 1999 when the United States and China reached their bilateral WTO agreement and again in Geneva in 2001.

China's WTO accession package represents a massive roster of binding commitments. The members of the U.S.-China Business Council are deeply hopeful that China will succeed in mastering the challenges of WTO membership, which it has agreed to confront. For that reason, the Council will remain intensely engaged and will work to maintain channels of communication with appropriate Chinese central and sub-central authorities on WTO-related

matters of concern to its corporate members. The Council will continue to seek ways to support Chinese efforts to establish a culture of WTO implementation and fulfillment and will remain closely supportive of now-enhanced U.S. government programs dedicated to realizing the full benefits of implementation for the United States, the global trading system, and the people of China.

The U.S.-China Business Council congratulates USTR for its outstanding and enduring efforts to assist U.S. companies in addressing the myriad WTO and non-WTO trade-related issues in China. The Council and its member companies stand ready to assist USTR further in its work on WTO and the many individual challenges U.S. business encounters in China.

**China's WTO Implementation Efforts:  
An Assessment of the First Nine Months of China's WTO Membership**

**Written Testimony by the United States-China Business Council  
Prepared on September 3, 2002**

**Submitted in response to the Office of the USTR's Request for Comments and Notice of  
Hearing Concerning China's Compliance with World Trade Organization (WTO)  
Commitments (Federal Register, Page 45580, 7/9/02)**

**Summary of Business Confidential Attachments**

**1. U.S.-China Business Council quarterly reports on China's WTO implementation (6/01-5/02) (business confidential)**

Since June 2001, the US-China Business Council has prepared a quarterly report assessing PRC WTO implementation efforts. This report is provided to Council member companies as part of an ongoing effort to provide key information and tools to track WTO-related changes in China. The documents are not comprehensive, but rather highlight particular PRC efforts known to the Council to bring China's system into WTO compliance. Selected condensed versions of these reports are available for public use on the Council's website, [www.uschina.org](http://www.uschina.org).

**2. PRC WTO- related and other legislation (business confidential)**

As part of the Council's efforts to track WTO-related regulatory changes in China, this database tracks legal and regulatory developments in China since December 11, 2001. The database also includes relevant laws prior to that time that were adopted in preparation for WTO accession.

## Selected Foreign-Supported WTO Training Events for China\*

### US Government Programs

#### Department of Commerce/US & Foreign Commercial Service

|                     |                |   |
|---------------------|----------------|---|
| Beijing             | December 2001  | Presentation by American Bar Association on telecommunications regulatory issues post-WTO             |
| Lanzhou, Gansu      | December 2001  | WTO basics and dispute resolution for Gansu government officials and business leaders                 |
| Shijiazhuang, Hebei | November 2001  | WTO basics for Hebei provincial officials and enterprise representatives                              |
| Beijing             | November 2001  | WTO basics for Beijing Administrative College staff   |
| Chongqing           | November 2001  | WTO basics for Chongqing city officials and entrepreneurs   |
| Tianjin             | October 2001   | WTO basics and antidumping for Tianjin officials and local business leaders (joint with USCBC)        |
| Kunming, Yunnan     | September 2001 | Workshop on quality systems and standards for medical device regulations                              |
| Beijing             | August 2001    | Telecom standardization issues with MII and AQSIQ, featuring FCC and NIST                             |
| Hangzhou, Zhejiang  | July 2001      | Series of IPR events to train PRC officials on TRIPs issues and prosecution of violators              |
| Shenyang, Liaoning  |                |   |
| Xiamen, Fujian      |                |   |
| Guiyang, Guizhou    | July 2001      | Workshops on WTO principles, globalization, investment, and transparency issues with various speakers |
| Chengdu, Sichuan    | June 2001      |   |
| Beijing             | May 2001       |   |
| Wuhan, Hubei        | May 2001       |   |
| Xi'an, Shaanxi      | April 2001     |   |

#### US Consulate in Shanghai

|          |               |   |
|----------|---------------|---|
| Shanghai | April 2001    | WTO dispute resolution seminar                        |
| Shanghai | December 2000 | WTO dispute resolution seminar for Hangzhou officials |
| Shanghai | October 2000  | Lecture on legal aspects of WTO entry                 |
| Shanghai | March 2000    | WTO assessment seminar                                |

#### Agricultural Section (US Embassy)

|     |          |   |
|-----|----------|---|
| USA | May 2001 | Training for State Council and agricultural officials |
|-----|----------|---|

#### US Customs Service (US Embassy)

|      |                                    |
|------|------------------------------------|
| 2001 | Training for enforcement officials |
|------|------------------------------------|

#### Public Affairs Section (US Embassy)

|                |              |   |
|----------------|--------------|---|
| Beijing        | June 2001    | IPR enforcement training delegation   |
| Xi'an, Shaanxi | January 2001 | Training for judicial officers (joint with Quality Brands Protection Committee) |

#### State of Hawaii

|        |             |  |
|--------|-------------|--|
| Hawaii | August 2001 | Use of law school resources at University of Hawaii to discuss WTO impact at local and regional levels |
|--------|-------------|--|

### Nongovernmental Institutions

#### Asia Foundation

|         |  |
|---------|--|
| Ongoing | Assisting legal education through support of PRC National Legal Aid Center |
|---------|--|

#### Asian Development Bank

|         |  |
|---------|--|
| Ongoing | Cooperating with MOFTEC under "Technical Assistance to the PRC on WTO Membership and Foreign Trade Law Reform" program |
|---------|--|

#### The Ford Foundation

|                |                 |  |
|----------------|-----------------|--|
| Washington, DC | Fall 2000, 2001 | Training of Chinese officials in two-week intensive programs |
|----------------|-----------------|--|

#### Georgetown University

|                |      |   |
|----------------|------|---|
| Washington, DC | 2001 | WTO law and policy courses for PRC officials (supported by the Ford Foundation) |
|----------------|------|---|

#### Harvard University Kennedy School of Government's China Public Policy Program

|               |         |   |
|---------------|---------|---|
| Cambridge, MA | Ongoing | Training and related seminars for PRC officials |
|---------------|---------|---|

#### The US-China Business Council

|         |               |  |
|---------|---------------|--|
| Beijing | November 2001 | WTO book and translation donation to MOFTEC (joint with US Embassy and |
|---------|---------------|--|

|          |         |  |
|----------|---------|--|
|          |         | Ford Foundation)   |
| Shanghai | 2000-02 | Digital videoconferences with Shanghai WTO Affairs Consulting Center |

### **World Bank**

|                   |             |  |
|-------------------|-------------|--|
| Distance Learning | August 2001 | Five weeks of programs in more than 10 cities on international trade and WTO accession |
|-------------------|-------------|--|

### **Other Governments**

#### **Australia/AusAid**

|                    |           |  |
|--------------------|-----------|--|
| Beijing, Australia | 1998-2002 | Training, research, and capacity building (in cooperation with UIBE) |
|--------------------|-----------|--|

#### **European Union**

|         |                                 |  |
|---------|---------------------------------|--|
| Beijing | November 2000-<br>November 2003 | EU-China Program for China's Accession to WTO (in partnership with MOFTEC), budget of 3 million euros (\$2.67 million) |
| Beijing | 1998-2003                       | EU-China Intellectual Property Rights Cooperation Program, to help align China's IPR regime with international norms   |

#### **Germany**

|         |           |   |
|---------|-----------|---|
| Beijing | 2000      | Worked to establish WTO Inquiry Center under the China (Hainan) Institute of Reform and Development |
| Beijing | 1997-2000 | GTZ-led assistance to NPC Finance and Economic Committee  |
| Beijing | 1997-2000 | Sino-German cooperation in economic law (in partnership with MOFTEC)                                |

#### **Japan**

|  |         |   |
|--|---------|---|
|  | Ongoing | Research and training projects in industries such as insurance, tax, agriculture, accounting, and logistics |
|--|---------|---|

#### **United Kingdom**

|         |                           |  |
|---------|---------------------------|--|
| Beijing | March 2000-<br>March 2004 | British Council leads EU consortium in EU-China Judicial Cooperation Program, budget of 13 million euros (\$11.58 million) |
|---------|---------------------------|--|

\*NOTE: This table of programs is meant to be indicative rather than comprehensive.

SOURCE: Compiled by Brian L. Goldstein and Stephen J. Anderson

### **Abbreviations used in the table:**

|         |  |
|---------|--|
| AQSIQ:  | PRC Administration of Quality Supervision, Inspection, and Quarantine    |
| EU:     | European Union   |
| FCC:    | US Federal Communications Commission                                     |
| GTZ:    | German Technology Cooperation Co.  |
| IPR:    | Intellectual property rights   |
| MII:    | PRC Ministry of Information Industry                                     |
| MOFTEC: | PRC Ministry of Foreign Trade and Economic Cooperation                   |
| NIST:   | US National Institute of Standards and Technology                        |
| NPC:    | PRC National People's Congress   |
| SDPC:   | PRC State Development Planning Commission                                |
| TRIPs:  | WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights |
| UIBE:   | University of International Business and Economics (Beijing)             |
| USCBC:  | The US-China Business Council  |
| WTO:    | World Trade Organization   |

Table reprinted from the January-February 2002 issue of *The China Business Review*.