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# China's Implementation of Its WTO Commitments: Mixed Results after Two Years


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China's accession to the World Trade Organization (WTO), the world's leading multilateral body setting rules and standards for international commerce, on December 11, 2001, came after 15 years of arduous negotiations led by the United States on behalf of the international community. On one level, China's accession was simply one more consequence of its decision in the late 1970s to open its doors to the outside world and to join the major multilateral organizations forming the fabric of the international community. But acceding to WTO had special importance to China, beyond its entry into the dozens of other institutions it joined as it emerged from its cocoon.

First, the WTO requires members to accept the free market principles that are at its core, e.g., removal of barriers to trade, nondiscriminatory treatment for foreign companies, elimination of export subsidies, requirements for state-owned companies to make decisions on a commercial basis, use of sound science to justify agricultural quarantines and bans, and so on. China's accession package was noteworthy in the expansiveness of its commitments in such areas.

Second, China's leaders understood that subjecting China to the WTO's rules and disciplines could advance their own objective of reforming China's economy according to market principles. The need to comply with international obligations could help, and has helped, override bureaucratic and protectionist objections to necessary change.

Third, in accepting the rules and disciplines of the WTO, China has had to pledge to take significant steps to bring transparency to the black box in which policy, regulations, and decisions were made before. It has pledged, for example, to publish draft regulations and laws for a period of public comment before their promulgation, to cease enforcement of non-public directives, to assure that judicial bodies independent of regulators review trade-related rulings, and to accept the authority of WTO dispute settlement panels.

Finally, it has pledged to open its markets to the goods and services provided by foreign countries. It committed to do so, *inter alia*, through deep tariff reductions, breaking monopolies on the right to export and import, vastly increasing quotas and tariff-rate quotas on restricted goods, and allowing sharply increased access to foreign companies in the services sectors, e.g. banking, insurance, securities, express carriers, distribution, legal services, accounting, telecommunications, and information technology.

China's accession has profound significance not only to China but to the world. To have the world's fourth largest trading country, soon to be the world's second largest economy, and the leading magnet for foreign direct investment in the world, standing outside the system of international rules governing trade could only be a source of frustration and friction for other countries grappling with how to deal with the entry of this new behemoth into the world trading system. The disruptions that China's emergence inevitably will bring can now be addressed in conformity with the well-established legal instruments and principles that have evolved over the half-century since the creation of the WTO's predecessor organization, the GATT.

There has been considerable skepticism about the ability and willingness of China to honor the commitments it has undertaken. The sympathetic critics point to the difficulty of moving an underdeveloped country of over one and a quarter billion people, with a rudimentary grounding in rule of law, into conformity with the WTO's rules-based system. The less sympathetic critics point to the dictatorship of the Communist Party, the opaqueness of the political process, and the vested interests in China resistant to markets and competition.

Almost two years after accession, how has China been doing in honoring its commitments? The picture is complex. Over 3000 WTO-inconsistent laws have been repealed or amended. There has been a steady stream of new laws and regulations designed to embody China's WTO commitments in domestic law. The Ministry of Commerce (MOFCOM) has led a nationwide campaign designed to foster understanding in the provinces of the requirements of WTO, and it has established a functioning Enquiry and Notification Center to answer questions by businesses and the public on the meaning of trade-regulated regulations.

In terms of specific commitments, the record varies markedly from sector to sector. An important factor that distinguishes commitments which China has smoothly implemented from those of which implementation has been rocky has been which agencies have been involved. When MOFCOM has had direct or relatively unchallenged responsibility, implementation generally has been satisfactory. For example, the promised tariff cuts have been posted with very few anomalies. Laws consistent with WTO standards on anti-dumping and countervailing duties have been passed. In areas where MOFCOM has a lesser say, and where ministries with protectionist constituencies or turf to protect are dominant, the results have been more negative.

Many U.S. companies were prepared to adopt a wait-and-see attitude toward Chinese compliance in the first year, recognizing the difficulty of the undertaking. In this second year since China's accession, however, voices of concern have been rising.

The area of greatest frustration to U.S. exporters has been agriculture. The Ministry of Agriculture, along with other ministries responsible for implementing China's agriculture commitments, such as the National Development and Reform Commission and the State Administration of Quality Supervision and Inspection and Quarantine (AQSIQ), have thrown up roadblocks to imports. A variety of restrictions – set-asides for agricultural imports intended for processors and re-exporters, issuance of quotas in quantities too small to be useable, delays in allocating quotas, and lack of transparency – have prevented the expanded tariff rate quotas that were supposed to be allotted from achieving their full potential. China's erratic performance in establishing a regime to regulate biotechnology products – issuing regulations requiring testing and labeling, allowing insufficient time for producers to test, threatening to halt imports of products that failed to comply with poorly thought-out new standards – failed to provide the predictability that growers and shippers needed, and disrupted trade in soybeans and corn. Phytosanitary standards set impossible tests, such as a zero pathogen level for poultry and meat not enforced on domestic production.

U.S. exporters of manufactured goods still face WTO-inconsistent trade barriers. Chinese customs continues to use "reference pricing" rather than actual transaction prices in levying duties on some imports. Manufactured products are still frequently tested by multiple certification bodies, sometimes by research centers affiliated with Chinese competitors, and are measured against unique Chinese standards inconsistent with international standards. Some imported products, like semiconductors and chemical fertilizers, are subject to the full 17 percent VAT while their domestic competition benefits from complete or large rebates.

China's services commitments require the cooperation of regulators for effective implementation. Here again the record has been mixed:

- At the behest of the regulatory/proprietary Ministry of Information Industry, "value-added" telecom services that should be eligible for more liberalized access have been classified as "basic services" subjecting them to a slower path to market entry.

- Automobile manufacturers and distributors are still waiting for the promised regulations permitting them to finance purchases of cars.[1]

- Air express carriers have gone through a difficult year and a half in which the China Postal Service tried to roll back rights and privileges they enjoyed before accession.

- The China Insurance Regulatory Commission has imposed restrictions on the ability of companies to establish branches as their Chinese headquarters, which sharply increases capitalization requirements.

- The People's Bank of China has not yet agreed to reasonable capitalization levels for branch banks, which could make their establishment unprofitable and impractical.

- Regulations affirming Chinese commitments to open up distribution services to foreign-invested companies are still waiting promulgation. Capitalization requirements for distribution outlets remain excessively high.

Protection of intellectual property rights (IPR) is another area where the Chinese made strong commitments, yet it remains at the top of the agenda for many U.S. companies in China. China has

[1] On November 12, 2003, the China Banking Regulatory Commission issued rules on auto financing and General Motors Acceptance Corp has since applied for a license to handle vehicle financing in China.

put in place generally WTO-consistent laws protecting copyrights, patents, and trademarks. Its Supreme People's Court has assigned responsibility for adjudication of IPR-related offenses to a specially trained corps of judges. Enforcement, however, remains grossly inadequate, and piracy levels for most copyright sectors exceed 90 percent. The combination of cultural proclivities, poor judicial and prosecutorial training, reluctance to impose adequate penalties, and bias against foreign right-holders conspire to assure the problem will take years to address. In the meantime, there is not a manufacturing sector that does not struggle with piracy problems – movies and video products, music, computer software, pharmaceuticals, and even automobiles have all been hard-hit by pirates.

Finally, the record in bringing transparency to China's trade rule-making regime illustrates the magnitude and importance of China's WTO undertaking. For the first time in its history, China has now begun to publish regulations for public comment before their effective date. The government has been collecting submissions by Chinese and foreign stake-holders, and in some instances delaying and amending regulations to be promulgated as a result. In a system that has traditionally paid scant regard to the views of those affected by central directives, this is a very important step. At the same time, the adequacy of the public notice has varied greatly from ministry to ministry, with some taking the commitment seriously and others regarding it as an annoyance.

This mixed record testifies to the strength of forces within China that are not reconciled to the commitments undertaken. At a time of rising unemployment, escalating budget deficits, and a weak performance by the rural economy, it takes both political courage and steadfast belief in the reformist path China's recent leaders have chosen to adhere to WTO commitments in the face of domestic outcries against particular obligations. It is unclear which way this leadership will lean when confronted by conflicts between domestic cries of temporary pain and international obligations.

The recent pressure from the United States over the value of the yuan may give some impetus to those who would argue for improved implementation. If, as appears the case, the Chinese have not made up their mind to allow an early adjustment of the yuan-dollar peg, then they will be looking for ways to prevent wholesale defection of support from their traditional friends in the U.S. business community. It can and will be argued that improved market access through better implementation of WTO commitments is one way of deflecting such pressures.

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