



THE ROYAL INSTITUTE OF  
INTERNATIONAL AFFAIRS

**China and the WTO: the theory and practice of compliance**

**Asia Programme Working Paper, No. 5**

**June 2003**

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## Summary

China, as a full member of the WTO... will have the right and responsibility to fashion and enforce the rules of open trade.<sup>1</sup>

George W. Bush, President of the United States of America, 2002

China will build the WTO into an open, fair, transparent and rational mechanism.<sup>2</sup>

Ambassador Sun Zhenyu, China's Trade Representative, 2002

Never in the history of the world has a country committed so much, on a voluntary basis, to change as China has done to adhere to the rules of the World Trade Organisation (WTO).<sup>3</sup> China's entry into the world body in December 2001 signals the beginning of a shift in global political and economic power. Not only is the world's most populated country and potentially its largest market a member of the WTO now, China's entry also marks a milestone in its global behaviour—from one based mainly on power and ideology to one based largely on commonly accepted rules.<sup>4</sup> In addition, not only has the power balance within the WTO been drastically altered,<sup>5</sup> but also how global political economy is going to be governed. This is an event that goes beyond the immediate concerns of businesspeople alone to the way in which international relations in general, and international political economy in particular, is going to change.

This paper analyses China's international behaviour shortly before and after its entry into the WTO, focussing on the ideas of responsibility and compliance. The General Agreement on Tariffs and Trade (the predecessor of the WTO), together with the World Bank and the International Monetary Fund, made up the post-war Bretton Woods architecture designed by

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<sup>1</sup> President Bush speaking to a news conference in Beijing on 21 February 2002. See [http://biz.yahoo.com/rf/020221/pek91398\\_1.html](http://biz.yahoo.com/rf/020221/pek91398_1.html) (accessed 27 February 2002).

<sup>2</sup> Quoted in *Taipei Times*, Internet ed., 29 January 2002. Sun is China's first Trade Representative to the WTO in Geneva. Before that, he was a vice minister of the Ministry of Foreign Trade and Economic Co-operation and a member of the GATT/WTO leading small group. See Margaret M. Pearson, 'The case of China's accession to GATT/WTO,' in David M. Lampton (ed), *The making of Chinese foreign and security policy in the era of reform* (Stanford: Stanford University Press, 2001), p. 348.

<sup>3</sup> In July 2002 the China Security Review Commission of the United States-China Commission issued a report to Congress of the U.S., chapter 3 of which is entitled 'China and the World Trade Organization'. On p. 8 of that chapter, the report says, 'China's accession documents are unprecedented within the WTO or its predecessor, the General Agreement on Tariffs and Trade (GATT), in terms of their complexity, range of of specific commitments, and number of deviations permitted at the time of accession.' For a soft copy of the report, see [www.uscc.gov/ch3-02.htm](http://www.uscc.gov/ch3-02.htm) (accessed 16 July 2002).

<sup>4</sup> On the successful conclusion of negotiations on China's membership of the WTO in September 2001, the Director-General of the WTO, New Zealander Mike Moore, has this to say: 'With China's membership, the WTO will take a major step towards becoming a truly world organisation. The near-universal acceptance of its rules-based system will serve a pivotal role in underpinning global economic co-operation.' See [www.wto.org/english/news\\_e/press01\\_e/pr243\\_e.htm](http://www.wto.org/english/news_e/press01_e/pr243_e.htm) (accessed 28 February 2002).

<sup>5</sup> According to European Union Trade Commissioner Pascal Lamy, China's entry into the WTO sparks off a major shift in the balance of power within the global trade body. The United States and the EU have been the dominant players in the WTO, with Japan and the developing world competing to get their issues on the agenda for discussion. This sort of four-corner power game has changed to a five-corner game with the inclusion of China. Associated Press World Business news, 15 February 2002 (accessed through Yahoo, 27 February 2002).

the United States to form its desired global economic order. At present the U.S. is overwhelmingly dominant in this global economic order. Now that China is a member of the WTO, how responsible its trading behaviour is going to be and how compliant it would be with the rules of the WTO will be closely watched by its many trading partners, especially the United States.

The paper is divided into five sections:

In Section I, I give a brief history of China's bumpy ride on the road to become a WTO member, so as to provide a context against which to better understand China's predicament in turning itself from a centrally planned economy to a market-oriented one;

Section II discusses the idea of responsibility in China's international behaviour and the concept of compliance in China's participation in international organisations, especially the WTO. It lays a theoretical foundation for the analysis in the next section;

Section III analyses the monitoring mechanisms used by the WTO and the United States to monitor China's WTO compliance;

Section IV examines what China has done so far to fulfil its duties and obligations under the rules of the global trading regime; and

In Section V, I offer some of my own thoughts on China's WTO compliance, looking briefly into the near future and the dilemma faced by its trading partner.

### **The bumpy ride to the WTO: from rejection to reception**

The history of China's relations with the WTO started with the formation of the General Agreement on Tariffs and Trade (GATT), shortly after the Second World War.<sup>6</sup> The Republic of China (ROC) became a contracting member when it signed the Final Act of Geneva on 30 October 1947, and subsequently one of the twenty-three founding members of GATT on 21 May 1948. The ROC formally withdrew from GATT in early 1950, amidst confusion resulting from the move of its seat of government to Taiwan upon the establishment in Beijing of the People's Republic of China (PRC) in October 1949.<sup>7</sup> For a time, neither the ROC nor the PRC was represented in GATT. The PRC initially had little interest in trade with the non-communist world and thus little need for GATT membership. In any event, it is

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<sup>6</sup> The historical narrative in the following paragraphs draws from materials found at China's Ministry of Foreign Affairs website [www.fmprc.gov.cn](http://www.fmprc.gov.cn), Taiwan's Ministry of Foreign Affairs website [www.mofa.gov.tw](http://www.mofa.gov.tw), and the WTO website [www.wto.org/english/news\\_e/press01\\_e/pr243\\_e.htm](http://www.wto.org/english/news_e/press01_e/pr243_e.htm) (accessed 27 February 2002).

<sup>7</sup> Taiwan withdrew from GATT at the urge of the U.S., which was worried that the PRC might take over the place of Taiwan in GATT, thus circumventing the U.S. trade embargo on China as a result of China's entry into the Korean War.

unlikely that GATT would have welcomed the PRC's membership at that time either, because of China's socialist, closed system of trading and its anti-capitalist and anti-American stance. In the tense years after its move to Taiwan, GATT membership was not a high priority for the ROC. However, in the 1960s, as Taiwan began to establish itself as an important trading power, interest in GATT participation returned. In 1965 the ROC began attending GATT meetings as an observer.

A major change came about in October 1971 when the PRC was formally admitted to the United Nations, while the ROC was forced to leave the world body. Subsequently, China acquired membership of a large number of specialised agencies affiliated with the UN system, forcing Taiwan to leave them. These included the United Nations Educational, Scientific and Cultural Organisation, the World Health Organisation, the Food and Agriculture Organisation, and others. In the case of GATT, as a result of China's insistence on a 'de-recognition' of the ROC upon its admission to the UN, Taiwan lost its observer status in November 1971. During the 1970s China was not ready for GATT membership. It was only after the adoption of the reform and opening-up policy in the late 1970s that China's external trade began to experience a rapid expansion and subsequently there was a felt need to enter GATT.

In the early 1980s the PRC gained observer status in GATT and eventually membership of the Multi-Fibre Agreement, a sub-group of the world trading system devoted to textiles. China formally applied for membership of GATT in 1986, starting a long process of negotiations with the GATT secretariat as well as with China's trading partners. The Tiananmen Incident of 1989 set back China's effort to normalise and improve its trade links with the outside world. In 1990 Taiwan began its own effort to rejoin GATT and became an observer again in 1992. Both China's and Taiwan's applications were transferred to the WTO in 1995, when it was formed to replace GATT. Because of China's political insistence, an agreement was reached so that China would enter the WTO ahead of Taiwan and that Taiwan's membership name in the WTO should read 'Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu', or 'Chinese Taipei' for short.

After fifteen years of tough negotiations on the terms and conditions of membership,<sup>8</sup> China was finally admitted to the World Trade Organisation in November 2001 as a developing country and became its 143<sup>rd</sup> member in December 2001 upon completion of the process of ratification and accession. One day after China was admitted to the WTO, Taiwan also gained

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<sup>8</sup> Part of the reasons why it took so long was because of the procedural changes from GATT to the WTO. The WTO is more legalistic than GATT; its functions are more comprehensive, covering both trade and non-trade issues; and China was required to enter into trade agreements with all the major trading nations, which were time-

admission, but as a developed country under the long and winding name. Although Taiwan was unable to enter the organisation under its official state name, its newly acquired membership was a great victory for the Taipei authorities, as this was the first major inter-governmental organisation that Taiwan was able to gain entry into in more than ten years.<sup>9</sup> Chinese Taipei became the 144<sup>th</sup> member in January 2002, under the same terms and conditions as for many other members and on an equal footing with them. The outcome is seen as a win-win solution for all parties concerned. Table 1 summarises the relationship among China, Taiwan, and the WTO since its formation.

**Table 1: Timeline of China's and Taiwan's accession to the WTO**

	<i>China</i>	<i>Taiwan</i>
1947 October 30		Republic of China signs the Final Act of Geneva for the creation of GATT
1948 May 21		Becomes founding member of GATT
1949 October 1	People's Republic of China established	
1958		Withdraws from GATT
1965 March 16		Becomes an observer
1971 October 25	The UN adopts a resolution to admit China	
1971 November 19		Loses observer status
1986	Applies to join	
1990 January 1		Submits application to rejoin
1992 September		Becomes observer again
1995 January 1	WTO replaces GATT	
1995 July 11	Becomes an observer	
2001 November 10	Entry approved	
2001 November 11		Entry approved
2001 December 11	Accession completed	
2002 January 1		Accession completed

consuming to reach. Public Lecture delivered by Supachai Panitchakdi, Director-General designate of the WTO, at the University of Hong Kong, 21 May 2002.

<sup>9</sup> Before the WTO, the other 'major' international organisation that Taiwan was able to acquire membership was the Asia-Pacific Economic Co-operation forum, in 1991 under the name 'Chinese Taipei'.

Sources: Adapted from information found at China's Ministry of Foreign Affairs website [www.fmprc.gov.cn](http://www.fmprc.gov.cn) and Taiwan's Ministry of Foreign Affairs website [www.mofa.gov.tw](http://www.mofa.gov.tw) (accessed 27 February 2002).

With membership of the WTO secured, China becomes a full-fledged member of the Bretton Woods system, having joined the World Bank and the International Monetary Fund in 1980. This event marks a new stage in China's transition from socialism to a largely market-driven economy and in China's arduous process of opening up and reform started some twenty-three years ago. China's integration with the global economy is greatly enhanced.<sup>10</sup>

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<sup>10</sup> What are the implications of China's entry into the WTO for China and the world? Although this question is not the focus of this paper, it is an important area to note. Several trends are discernible at this stage, concerning domestic consequences and international implications. They carry both challenges and opportunities. Despite its significance, China's entry into the WTO continues to stimulate debates within China, between the conservatives and the reformers. (This two-camps categorisation, though crude, is heuristic.) While the reformers stress the importance of membership and the political and economic benefits that may flow from it, conservatives warn that China's economy will face severe competition, domestic breakdowns and foreign control. The possible negative impacts include: first, the agriculture sector in which cheap foreign imports will leave many traditional farms out of work. The resultant unemployment in the vast rural area, together with existing unemployment in the cities, will create social tensions and unrest that might lead to instability and even chaos in society. (It has been estimated that the size of unemployment can reach 47 million. See testimony of William H. Overholt before the U.S.-China Commission, 18 January 2002, at [www.uscc.gov/tesove.htm](http://www.uscc.gov/tesove.htm), accessed on 8 March 2002. A Chinese White Paper on employment and social welfare issued in April 2002 puts the number of registered urban unemployed at 6.8 million at the end of 2001, with about 150 million surplus rural labourers. It also indicates that the number of urban jobless may rise to more than 20 million over the next four years. See *South China Morning Post*, 30 April 2002, p. 1.) Secondly, the many state-owned enterprises will not be able to compete with the outside. Many will collapse unless greater government subsidy is available, which is currently in short supply. Thirdly, foreign companies will expose China's financial and service industries—like banking, insurance and telecommunication—to severe competition and possible take-over. These and other reservations, though not entirely groundless, must be balanced by benefits which might accrue from a more open international market for China's products and from other opportunities, such as investment attractions and political goodwill.

The prospect of cheap Chinese products flooding the international market is the major concern of many of China's trading partners, including those in the developing world which are competing with China for exports. However, for consumers in many parts of the world, it can be seen as a blessing because they will be able to enjoy cheap Chinese products. On balance, countries around the world welcome China's entry into the WTO, because that will help booster two-way trade, to the benefit of the global and the local economies. The fact that many of China's major trading partners concluded trade agreements with it before its accession to the WTO testifies the merits of engaging China rather than isolating it from the global economy. Trade friction between China and its trading partners will not diminish, however, but the gratifying aspect is that these frictions will now have a new channel for resolution, that is, through the rule-based Dispute Resolution procedures in the WTO, rather than to seek redress through bilateral trade retaliation. Many of the fears harbored initially by China's trading partners in neighboring countries proved to be excessive, as exports of East Asian economies grew by 5.3 per cent in 2002. Of these, exports to China, including Hong Kong, jumped by 32.7 per cent. See *South China Morning Post*, 20 February 2003, p. 9.

China's entry into the WTO provides an opportunity for the Chinese government to enhance its legitimacy before the eyes of the Chinese people, if the transition is handled smoothly and results in improved living standard. The opposite can also be possible, that is, the government may lose its legitimacy, if the transition proves to be detrimental to the overall health of the economy or leads to social instability. Either way, the process of increasingly opening up and reform is likely to lead to a greater demand for political change and openness as a result of increasing public awareness of civil rights.

Another opportunity is the possible spill-over effect from membership of the WTO of both China and Taiwan to greater communication and integration between the two. The trade offices of China and Taiwan based in Geneva, the site of the WTO headquarters, will provide an additional channel for dialogue on trade matters, either in a bilateral or multilateral way. Taiwan hopes that this will lead to a more formal way of starting a dialogue on trade across the Taiwan Strait and to lead to more direct or indirect communications of one kind or another, based on equality in negotiation status. Much depends on the goodwill on both sides to make good use of this opportunity. At the moment, it seems to depend more on the Beijing side than the Taipei side as to whether or not to limit the new-found channel to trade matters or to expand it to cover other matters. It also depends on whether Beijing

## **Responsibility and compliance: 'Western instruments, Chinese application'?**

China's membership of the WTO carries heavy duties and responsibilities, laid down in detail in a legal document some 900 pages long.<sup>11</sup> In essence, China has committed:<sup>12</sup>

- ❑ To provide non-discriminatory treatment to all WTO Members.
- ❑ To eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export.
- ❑ To remove price controls for protecting domestic industries or services providers.
- ❑ To implement the WTO Agreement in an effective and uniform manner by revising some of its domestic laws and enacting new legislation fully in compliance with the WTO Agreement.
- ❑ To allow all its enterprises to import and export all goods, and trade with them throughout the customs territory with limited exceptions, within three years of accession.
- ❑ To stop maintaining or introducing any export subsidies on agricultural products.

Many of the restrictions that foreign companies have at present in China will be eliminated or considerably eased after a three-year phase-out period. In other areas, like the protection of intellectual property rights, China will have to implement the TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement in full from the date of accession.<sup>13</sup> In simple terms, China has to adopt non-discriminatory practices and to increase transparency in business transactions in accordance with WTO rules and regulations. However, it reserves the right of exclusive state trading for some products such as cereals, tobacco, fuels and minerals, and maintains some restrictions on transportation and distribution of goods inside the country.

How to evaluate China's responsibility as a member of the WTO? The idea of responsibility in personal affairs is not new, as its importance in human relationships has been stressed from time immemorial. In the study of international relations, it seems to have attracted the attention of the 'Cosmopolitan' or 'International Society' school of thought, which is a stream

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prefers to continue to shut the door, requiring Taiwan to accept the 'one-China' principle before meaningful talks can begin. As of late 2002, the trade offices of both China and Taiwan in Geneva have agreed to talk to each other on some trade disputes between the two.

In any case, membership of both in the WTO opens a window of opportunity for easing tensions across the Strait and for providing a mechanism for dispute resolution, which might be built upon to increase mutual understanding and trust.

<sup>11</sup> China's WTO commitments are documented in (1) Protocol on the Accession of the People's Republic of China, which contains the terms of membership; (2) Report of the Working Party on the Accession of China; and (3) annexes containing market access commitments.

<sup>12</sup> [www.wto.org/english/news\\_e/press01\\_e/pr243\\_e.htm](http://www.wto.org/english/news_e/press01_e/pr243_e.htm) (accessed 28 February 2002).

<sup>13</sup> *Ibid.*

of thought closely associated with the ‘English School’<sup>14</sup> of international relations. Mainstream international relations approaches, such as the Realist school or the Liberalist school, do not pay much attention to the idea of responsibility. Still, the English School has little to say when it comes to the idea of responsibility in international affairs, relative to the growing volume of literature on global politics. In a way, the idea of responsibility in international relations is under-developed, and is overshadowed by considerations of power politics and relations. For instance, the English School, as had been pointed out by one of its leading proponents, Hedley Bull, suggests that great powers in world affairs have a special responsibility in seeing that there is a modicum of order in a largely anarchical world,<sup>15</sup> where a central authoritative enforcement agency comparable to a national government within a state is missing. In other words, great powers have a role to play in managing world affairs, in setting up rules of engagement, and in maintaining the status quo. This view, of course, is underpinned by power politics, and is therefore disputed by the Liberalists and strongly challenged by the Structuralists or Marxists, not so much on the ground of the exercise of power *per se*, but on the ground of the resulting inequality and injustice. The idea of responsibility is therefore contested and subject to different interpretations.

Despite the dearth of literature on the idea of responsibility, Robert Jackson and Georg Sørensen have put forward in clear conceptual terms three dimensions of responsibility in international relations. They are national responsibility, international responsibility, and humanitarian responsibility.<sup>16</sup> National responsibility refers to the kind of responsibility directed towards citizens of a state. For example, states have the responsibility to safeguard national security for its citizens. International responsibility, on the other hand, refers to the kind of responsibility directed towards other states, for example, issues of maintaining international order and peace. And humanitarian responsibility is universal, directed towards all people everywhere, for example, the issue of human rights. This kind of classification is apparently a Western way, which may not accord with understandings elsewhere.<sup>17</sup> For instance, many Third World countries, including China, regard human rights as domestic affairs; they are relative rather than universal in nature as they are closely related to the stages

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<sup>14</sup> The English School has a website, hosted by the Department of Politics and International Relations at the University of Kent at Canterbury, see <http://www.ukc.ac.uk/politics/englishschool/>.

<sup>15</sup> See Hedley Bull, *The anarchical society: a study of order in world politics*, 3<sup>rd</sup> ed (Basingstoke and New York: Palgrave, 2002), pp. 212-20.

<sup>16</sup> Robert Jackson and Georg Sørensen, *Introduction to international relations* (Oxford: Oxford University Press, 1999), pp. 158-60.

<sup>17</sup> Some ideas concerning China’s responsibility in world affairs have been developed by Gerald Chan in ‘Power and responsibility in China’s international relations,’ in Zhang Yongjin and Greg Austin (eds), *Power and responsibility in Chinese foreign policy* (Canberra: Asia Pacific Press, 2001), pp. 48-68; and in Gerald Chan, ‘Is China a “responsible” state? Assessing its multilateral engagements,’ paper presented at the International Studies Association Hong Kong Convention, 26-28 July 2001. A revised version will appear as a chapter in Joseph Y.S. Cheng (ed), *China’s challenges in the twenty-first century* (Hong Kong: City University Press, 2003).

of national development of individual countries. Furthermore, individual rights and freedoms are subsumed under collective or community needs.

The basic elements of individualism, freedom, and democracy form the core of the Western thinking of responsibility. To protect and sustain these elements of responsibility, rules have to be made and followed. When this line of reasoning is extended to international relations, one can see that international order is created and maintained by great powers, especially those in the West, which dominate the international system by designing the rules of international interactions and monopolising the adjudication process. This is *the* international society, the *civilised* one.<sup>18</sup> Those who wish to join this civilised society in the hope of receiving certain kinds of benefits have to agree to abide by the rules and regulations so designed and controlled. A latecomer to the world of international organisations, like China, has few options: it either has to join them or to stay out. Joining them would require it to play by the existing rules of the game. Staying out would lead to its being isolated or ostracised by the wider community. One can, of course, stay out and start a revolutionary change to the existing order, as China did with respect to the United Nations in the 1950s and early 1960s, but with little or no avail. China's decision to join the WTO must have been considered very carefully, even agonisingly, by its leaders, for there are obviously pros and cons associated with membership. In the end, there are likely to be more gains than losses in the long run. The task ahead for the Chinese leaders, therefore, is to minimise the risks while trying to maximise the opportunities.

By signing the documents of accession, China has accepted extraordinary responsibilities of changing the ways it used to work. Will China become a responsible member of the WTO then? No one can say for sure, despite the assurances of its top leaders, including Premier Zhu Rongji and Vice Premier Wen Jiabao,<sup>19</sup> that China will. Its trading partners are, however, not so sure: they are rather cautious, and they begin to take steps to monitor China's compliance with the rules it has agreed to follow.

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<sup>18</sup> The September/October 2002 issue of *Foreign Policy* magazine, published by the Carnegie Endowment for International Peace in Washington, DC, has published a special section on 'What is the international community?' This is in response to the U.S. war against the Taliban regime launched in October 2001, in which President George W. Bush declared 'We are supported by the collective will of the world'. For many observers, that collective refers to the 'international community' or 'international society'. Does such a community or society exist? If so, who is part of it? Who is not? Whose values does it reflect? And how does it work? How should it work? The magazine invited nine notable thinkers, activists, journalists, and policy makers from across the ideological spectrum to scrutinise the international community and to offer their views. In a recent publication, Edward Keene offers a distinctive, valuable critique of the idea of civilisation in Western, especially British, thinking in international relations. See his *Beyond the anarchical society: Grotius, colonialism and order in world politics* (Cambridge: Cambridge University Press, 2002). For a more empirical and cross-cultural analysis of the idea of civilisation in a globalised world, see Mehdi Mozaffari (ed), *Globalisation and Civilisation* (London and New York: Routledge, 2002).

<sup>19</sup> *South China Morning Post*, 18 February 2003, p. 7.

Compliance is a concept closely related to responsibility. It is an act of implementing and enforcing agreements made, a correspondence between behaviour and agreed rules. Generally regarded as a legal concept, it has gained increasingly greater currency in political science. As a result of globalisation and intensifying interactions of one kind or another amongst states and non-state actors, there is a growing corpus of rules and norms of international behaviour. Some are legally binding and formal in nature; others, in increasing numbers, are ‘soft’ in nature. Assessing compliance becomes a difficult task, as states dispute over what really constitutes compliance, especially when the rules are not very clear-cut and hence open to different interpretations. Some states choose to comply with some rules on some issues at some times, while others do not. State behaviour therefore varies across time and space. In fact scholars have disputed over the extent of state compliance. Some, like Louis Henkin, argue that probably ‘*almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time* [emphasis in original]’.<sup>20</sup> Other scholars, like Marc Busch and Eric Reinhardt, found that the total non-compliance with GATT panel rulings approached thirty per cent, and almost sixty per cent of rulings failed to elicit full compliance.<sup>21</sup> The picture of global compliance becomes rather complex, given the fact that international politics is largely anarchic in nature. What is compliance to some may be seen as non-compliance to others. And there is no one in an authoritative position to make a definitive judgement, let alone a binding one.

Why do states choose to comply then? In general, states are induced to do so because positive incentives outweigh negative sanctions, according to their calculations. It is on the whole a rational choice, rational in the sense that states calculate costs and benefits coolly, based on information available to decision-makers. It is, by and large, a limited rationality, tinted with Constructivist desire to be seen and identified as law-abiding nations and with the Functionalist urge to learn and socialise. The choice can change over time when perceptions change or when new information is fed to decision-makers. Decisions to comply or not to comply are often based on a combination of domestic and international factors. The fact that China decided to enter the WTO shows that the country is at least prepared to subject itself to compliance tests.

Despite China’s readiness to comply with WTO rules, does it have the capacity to do so? That is the sort of question that sticks in the minds of many of China’s trading partners. Peter M. Haas, a professor of political science in the U.S., has pointed out that for a country that is

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<sup>20</sup> Louis Henkin, *How nations behave*, 2<sup>nd</sup> ed (New York: Columbia University Press, 1979), p. 47, cited in Kal Raustiala and Anne-Marie Slaughter, ‘International law, international relations and compliance,’ in Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (eds), *Handbook of international relations* (London; Thousand Oaks; New Delhi: Sage Publications, 2002), p. 540.

<sup>21</sup> Raustiala and Slaughter, ‘International law, international relations and compliance,’ p. 549.

willing but lacks the capacity to comply, what others can do is to monitor, assess, and enforce compliance on the one hand and, on the other, to assist that country to build the necessary capacity to do so.<sup>22</sup> This is precisely what China's largest trading partner, the United States, has embarked to do, on its own as well as working with other countries and international organisations. From a theoretical point of view, the United States' approach is basically a Neo-Realist one, coupled with elements of Liberal Institutionalism and Social Constructivism.<sup>23</sup> A Neo-Realist view suggests that state behaviour is based on material capacity, that the U.S. is prepared to use its power to monitor and to ensure that China complies, and that the U.S. will not shy away from exerting pressure to achieve such an outcome. This kind of approach is aimed at promoting American national interests, especially its trading interests. A Liberal Institutionalist view, however, suggests that state behaviour is shaped by international regimes—rules, norms, and principles of international institutions. From this perspective, the U.S. plans to work closely with the WTO, and other like-minded trading nations, to monitor and assess China's compliance behaviour. Finally, a Social Constructivist approach stresses the importance of shared knowledge and a common understanding in shaping state behaviour. To achieve this, the U.S. is working with liberal government officials, academics, businesspeople and groups in China to promote and strengthen the idea of free trade and to help this 'epistemic community'<sup>24</sup> to strengthen China's capacity to comply.

How to deal with a country if it does not comply with international agreements? There are two lines of thinking here. One, which can be called the 'legalistic' school, stresses the importance of legal compliance of states. If states do not comply, then legal actions should be brought to bear on their non-compliance, including the use of various kinds of sanctions available to complaining states to get redress. The other is liberal in nature and can be called the 'liberal' school,<sup>25</sup> which calls for a flexible, diplomatic solution to resolve complaints arising out of non-compliance. These two schools represent two opposite ways of dispute settlement. They spring from two different philosophical approaches to dealing with the issue of compliance: enforcement and managerialism. Managerialism is based on 'the premise that states have a propensity to comply with their international commitments.'<sup>26</sup> When left alone,

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<sup>22</sup> Peter M. Haas, 'Choosing to comply: theorising from international relations and comparative politics,' in Dinah Shelton (ed), *Commitment and compliance: the role of non-binding norms in the international legal system* (Oxford: Oxford University Press, 2000), pp. 47 and 60, Tables 2.1 and 2.5.

<sup>23</sup> The use of the Neo-Realist, Liberal Institutionalist, and Social Constructivist approaches here is drawn from Haas, 'Choosing to comply,' pp. 51-64.

<sup>24</sup> For some useful discussions on such an 'epistemic community' in China, check David M. Lampton (ed), *The making of Chinese foreign and security policy in the era of reform* (Stanford: Stanford University Press, 2001), index.

<sup>25</sup> Supachai Panitchpakdi calls these two schools the 'litigation route' and the 'policy route' respectively, in his Public Lecture in Hong Kong, 21 May 2002.

<sup>26</sup> Raustiala and Slaughter, 'International law, international relations and compliance,' p. 542.

states are inclined to comply and can manage well their compliance behaviour. However, enforcement theorists think otherwise:<sup>27</sup> external pressure is required to bring about state compliance. The action that the United States takes is a combination of both: While trying to negotiate issues of non-compliance at an early stage and in an amicable way as far as possible, it is prepared to use unilateral retaliatory actions as well as to invoke the Dispute Settlement Mechanism of the WTO to get what it wants.

### **How effective are the monitoring mechanisms?**

No country is more concerned about China's WTO compliance than the United States, as the U.S. is the world's largest trading nation and China the fourth largest, after the U.S., Japan, and the European Union (in 2001).<sup>28</sup> To the U.S., China is its fourth largest trading partner. And to China, the U.S. is its largest trading partner. As of mid-2001 the annual trade between the two totalled no less than US\$120 billion,<sup>29</sup> representing a huge increase from US\$5 billion in 1980. The U.S. is China's largest source of foreign investment apart from Hong Kong and Taiwan, with US\$34.4 billion invested in China between 1979 and 2001, and US\$4.4 billion in 2001 alone.<sup>30</sup> Other trading partners that are concerned about a similar compliance behaviour of China include the European Union, Japan, Canada, and Australia. China's Asian neighbours, especially those in Southeast Asia, are more concerned about its increasing economic competitiveness and its ability to divert foreign investments away from them.

The U.S. monitors China's WTO compliance through three ways: unilateral actions, inter-governmental co-ordination, and multilateral arrangements. Of these, America's own unilateral effort is the most significant. Its monitoring mechanism is massive. In fact it is the largest of any trade agreement,<sup>31</sup> involving many staff posted in Washington DC, Geneva, and some major cities in China. At the heart of this mechanism is an inter-agency group called the Trade Policy Staff Committee (TPSC), in particular its Sub-committee on China's WTO Compliance, formed by the Bush administration. This inter-agency group, chaired by the U.S. Trade Representative Office's Deputy Assistant, brings together representatives from some twenty different agencies in the U.S. government, including the Departments of Treasury,

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<sup>27</sup> *Ibid*, pp. 542-4.

<sup>28</sup> According to WTO senior economist Karl-Michael Finger. See *South China Morning Post*, 3 May 2002, Business, p. 1. In year 2000 China was the seventh leading exporter and eighth largest importer, according to *WTO News*, Press 243, 17 September 2001. For a comparison of the major economic statistics of the world's forty-six major trading nations, see *Guoji wenti yanjiu [International Studies]*, Beijing, No. 2 (2002), pp. 54-5.

<sup>29</sup> Testimony of Robert A. Kapp, President of U.S.-China Business Council, to the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, 10 July 2001, at [www.uschina.org/public/testimony/testimony12.html](http://www.uschina.org/public/testimony/testimony12.html) (accessed 7 March 2002).

<sup>30</sup> Max Baucus, 'WTO: will China keep its promises? Can it?' 6 June 2002, at the Congressional-Executive Commission on China website [www.cecc.gov/index](http://www.cecc.gov/index) (accessed 28 August 2002).

<sup>31</sup> Charlene Barshefsky, U.S. Trade Representative, 'China's WTO accession; America's choice,' speech to the National Association of Counties, Washington DC, 6 March 2000.

Commerce, State, Agriculture, and Labour.<sup>32</sup> It held its inaugural meeting in December 2001 and is scheduled to meet every month to consider China's obligations, steps that China has taken, and ways that the U.S. should respond.<sup>33</sup> Its mandate is to co-ordinate U.S. government efforts to ensure that China complies with its WTO commitments. Additional meetings of various sub-groups are also scheduled regularly.<sup>34</sup> The TPSC is required to submit annual reports to the government on China's WTO compliance, the first one being scheduled at the end of 2002 (to be discussed later).

The TPSC is only one of the three layers that make up the hierarchical structure responsible for dealing with China's compliance. While the actual monitoring and processing of incoming information takes place at the TPSC level, significant questions of policy are taken up at the deputy-level Trade Policy Review Group. The final, decision-making layer in this structure is the cabinet-level National Economic Council, headed by the chief economic adviser to President Bush.<sup>35</sup> Table 2 outlines this structure.

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<sup>32</sup> It is interesting to point out that, as of March 2002, the U.S. Trade Representative Office had 178 full-time staff with a budget of US\$26 million. This budget was in fact no much more than what the Defense Department spent on stationery each year. With this budget the Office addressed US\$2 trillion in U.S. trade with the world. See Barshefsky, 'China's WTO accession; America's choice'. In view of China's entry into the WTO, funding for agencies with responsibility for trade agreement compliance and administration of U.S. trade laws was increased by \$22 million and full-time staff by 100. See Commerce News, United States Department of Commerce, 31 March 2000, at [www.ita.doc.gov/media/CommerceNews/TPCC00.html](http://www.ita.doc.gov/media/CommerceNews/TPCC00.html) (accessed 28 February 2002).

<sup>33</sup> Speech given by Robert B. Zoellick, U.S. Trade Representative, to the U.S.-China Business Council, Washington, D.C., 31 January 2002.

<sup>34</sup> Statement of Shaun Donnelly, Acting Assistant Secretary, Bureau of Economic and Business Affairs, U.S. Department of State, to the U.S.-China Commission's Public Hearing on WTO Compliance and Sectoral Issues, 18 January 2002, at <http://usinfo.state.gov/regional/ea/uschina/donnelly.htm> (accessed 28 February 2002).

<sup>35</sup> 'Business Alert – US', Issue 25, Hong Kong Trade Development Council, 17 December 2001, at [www.tdctrade.com/alert/us0125.htm](http://www.tdctrade.com/alert/us0125.htm) (accessed 7 March 2002).

Table 2: The Three-Tier Structure of the U.S. Monitoring Mechanism

<i>Tier / Role</i>	<i>Actors</i>	<i>Functions</i>
Decision making	U.S. President National Economic Council	‘The buck stops here.’ Cabinet level Advises the President
Policy review	Trade Policy Review Group	Sub-Cabinet level Chaired by Deputy U.S. Trade Representative (USTR)
Information gathering & analysis	Trade Policy Staff Committee Subcommittee on China WTO Compliance  Government agencies Interest groups Businesspeople & companies	Made up of representatives from 20 or so agencies, including Departments of State, Treasury, Commerce, Agriculture, Labor, etc. Chaired by Deputy Assistant USTR Initiates position papers Meets monthly Sub-group meetings Trade-related staff in Washington DC, Geneva and major cities in China Embassy and consulates in China Interest groups: U.S. Chamber of Commerce; U.S.-China Business Council; American Chamber of Commerce, American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), etc. Functions: monitoring, consultation, enforcement, capacity building

Sources: Various Internet sources.

Acknowledgement: Thanks to Professor Ming K. Chan of Hoover Institution, Stanford University, for some useful suggestions in making this table.

In monitoring China’s WTO compliance, the TPSC acts as a clearinghouse for information collected by U.S. businesses operating in China as well as by U.S. government agencies that are monitoring and analysing events as they unfold in the Chinese economy. As individual U.S. businesses have the most extensive insights into how well the Chinese government performs in this regard, the Bush administration is working closely with the American Chamber of Commerce in Beijing and Shanghai, the U.S.-China Business Council, and the U.S. Chamber of Commerce.

In terms of monitoring and putting pressure on China to fulfil its WTO obligations, the Department of State is co-ordinating a network of groups to carry out surveillance in the field. Four Department of Commerce compliance officers are posted in the U.S. Embassy in Beijing.<sup>36</sup> The Embassy has established a WTO Implementation Co-ordination Committee chaired by the Economic Minister. Its aim is to co-ordinate WTO monitoring, compliance, technical assistance, and outreach efforts of several officials. These include State Department Economic, Environment, Science and Technology, and Public Affairs officers, as well as Foreign Commercial Service officers, Foreign Agricultural Service officers, and Customs attachés. This committee is responsible for tracking and analysing changes in laws and regulations, maintaining regular dialogues with U.S. government officials on WTO commitments, undertaking outreach programmes for Chinese government and other audiences, and meeting regularly with members of the private sector and other diplomatic missions to assess progress and to identify possible problems. The five consulates in Shanghai, Guangzhou, Chengdu, Shenyang and Hong Kong also play key roles on the front lines in these monitoring and co-ordinating efforts.<sup>37</sup>

The U.S. government realises that China faces a mammoth task in fully implementing and enforcing WTO rules, a task that affects in numerous ways the Chinese government works, including the proper co-ordination between the central government in Beijing and provincial governments. To monitor and put pressure on China is one thing, but to help China to understand the way WTO rules work in practice within the country is quite another. To undertake the latter task, the U.S. government has organised, in co-ordination with the business sector, multilateral institutions, and the Chinese government at various levels, numerous seminars and workshops in some major cities in China in the past few years.<sup>38</sup> Topics cover areas of the rule of law, financial services, protection of intellectual property, and trade standards. Other countries like Europe, Germany, Canada, Japan, and Australia also run similar training and capacity-building exercises.<sup>39</sup>

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<sup>36</sup> 'Business Alert – US,' *ibid.*

<sup>37</sup> Statement of Shaun Donnelly to the U.S.-China Commission's Public Hearing on WTO Compliance.

<sup>38</sup> Although China entered the WTO in December 2001, training related to TRIPS (trade-related intellectual property rights) was put in place in 1995 to prepare China for its need to provide TRIPS compliant enforcement. See David Quam's testimony before the U.S.-China Commission, 18 January 2002, fn 2, at [www.uscc.gov/tesqua.htm](http://www.uscc.gov/tesqua.htm) (accessed 8 March 2002).

<sup>39</sup> For some details about foreign-supported WTO training facilities for China, see Brian L. Goldstein and Stephen J. Anderson, 'Foreign contributions to China's WTO capacity building,' *The China Business Review*, January-February 2002. According to Christian Murck, chairman of the American Chamber of Commerce in Beijing, the EU has been active in assisting China for almost a decade. Their funding is at the level of about US\$10 million a year. Germany comes in second as a major player in the field. The German Technical Assistance agency has trained MOFTEC's lawyers in trade law and WTO compliance. Next to Germany comes Canada as a significant player. See Murch's statements made at a hearing of Congressional-Executive Commission on 'WTO: Will China keep its promises? Can it?' on 6 June 2002, at [www.cecc.gov](http://www.cecc.gov) (accessed 28 August 2002).

In terms of dealing with China's compliance, the Department of Commerce is directly involved, and it has a five-point plan:<sup>40</sup>

- ❑ To concentrate on enforcement efforts;
- ❑ To help China reform;
- ❑ To address promptly market access problems;
- ❑ To give U.S. companies a head start; and
- ❑ To monitor aggressively trade flows.

To carry out these tasks, the Department has set up a Market Access and Compliance unit, which aims to 'obtain market access for American firms and workers and to achieve full compliance by foreign nations with trade agreements they sign with [the U.S.]'.<sup>41</sup> Within this unit, a Trade Compliance Centre works with American traders who have compliance complaints against another country, including China.<sup>42</sup> In March 2002 the Department opened a Trade Facilitation Office in Beijing to support and co-ordinate compliance activities in both Beijing and Washington DC and to act as an 'early warning' system.<sup>43</sup>

In addition to the efforts of the executive branch of the U.S. government, the Senate Finance and the House Ways and Means Committees have asked the General Accounting Office to conduct a four-year investigation into China's WTO compliance.<sup>44</sup> (This Office is the investigative arm of Congress. It exists to support Congress in meeting its Constitutional responsibilities.)

Apart from its unilateral effort in monitoring China's compliance, the U.S. government also initiates collaboration with like-minded trading countries such as the U.K., Germany, Japan, Canada, and Australia, although at present this kind of collaboration seems quite limited. The U.S. also co-operates with international agencies such as the World Bank, the Asian Development Bank, and other private foundations and universities in organising trade capacity-building programmes in China. The amount of aid to help China in this respect is, however, very small compared with similar kinds of aid to countries in eastern Europe and the former Soviet Union.

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<sup>40</sup> Details can be found in the testimony of William H. Lash III, Assistant Secretary of Commerce for Market Access and Compliance, before the U.S.-China Commission's Public Hearing on WTO Compliance and Sectoral Issues, 18 January 2002, at <http://usinfo.state.gov/regional/ea/uschina/lash.htm> (accessed 8 March 2002).

<sup>41</sup> Testimony of William H. Lash III, *ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Testimony of Grant Aldonas, Under Secretary of Commerce for International Trade, at a hearing of Congressional-Executive Commission on China on 6 June 2002 to consider China's WTO compliance, at [www.cecc.gov/pages/hearings/060602/](http://www.cecc.gov/pages/hearings/060602/) (accessed 28 August 2002).

<sup>44</sup> 'WTO: Will China keep its promises? Can it?' Hearing before the Congressional-Executive Commission on China, 6 June 2002, p. 9, at [www.cecc.gov](http://www.cecc.gov).

Ultimately, the U.S. can rely on the Transition Monitoring Mechanism and the Dispute Settlement Mechanism of the WTO to get redress from China if it fails to comply. The Transition Review Mechanism (TRM) is an *unprecedented* measure requiring China to provide detailed information to WTO members and to give them the opportunity to raise questions about Chinese compliance with its WTO commitments.<sup>45</sup> China's trading practice will be reviewed annually, in terms of its laws, regulations and programmes, in the first eight years after its accession to the WTO, followed by a final review during the ninth to the tenth year. In this TRM process, the sixteen subsidiary bodies of the WTO that have mandates covering China's commitments,<sup>46</sup> such as the Council for Trade in Goods, the Committee on Subsidies and Countervailing Measures, the Committee on Antidumping Measures, will review China's compliance. China is under obligation to provide relevant information 'in advance' of these reviews. The results of these reviews will then be reported to the WTO General Council, which will conduct the final review. China's accession Protocol gives a detailed list of specific information it must provide, including economic data in ten fields ranging from foreign exchange to pricing policies, as well as copies of laws and regulations on issues ranging from import licensing to government procurement.<sup>47</sup> The U.S. will no doubt participate actively in the TRM process and to study these reviews very carefully to make sure that China complies with WTO rules, and it will not hesitate to put pressure on China to make necessary changes. The idea of this TRM is to provide peer-group pressure on China for conformance to obligations.

The Dispute Settlement Mechanism is, on the other hand, available to member countries of the WTO to invoke if they feel that they have not been fairly treated by other member countries. The general rule is that the complaining country can ask the target country to discuss the issue involved. If the result is not satisfactory, the complaining country can take the case to the WTO for settlement before a tribunal. If the targeted country fails to act upon the advice of the tribunal, then the complaining country can take retaliatory measures against it. The process usually takes several years, with countries in conflict imposing trade sanctions of one kind or another on the other. In most cases, bilateral agreements and compromises are made before the dispute is to be decided by a trade tribunal. Going through this dispute settlement process is not entirely an ideal way to resolve possible trade conflicts with China. The U.S. intends to help or put pressure on China to change before reaching such a stage, but,

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<sup>45</sup> Testimony of William H. Lash III, *ibid.* China has made a commitment to subject itself to the review process, under Article 18 of its Protocol of Accession.

<sup>46</sup> Testimony of Jon M. Huntsman, Deputy U.S. Trade Representative, at a hearing of Congressional-Executive Commission on China on 6 June 2002. The TRM process had been activated, and committee and council meetings were underway in September 2002 to review China's performance.

<sup>47</sup> Report to Congress of the U.S. by the China Security Review Commission, July 2002, p. 13 of chapter 3.

as many American officials have reiterated, the U.S. will not be shy away from using this legal mechanism as a last resort.

Besides the Transition Monitoring Mechanism and the Dispute Settlement Mechanism, some safeguards built into China's accession Protocol and its WTO membership can also be used by the United States to protect itself. These include non-market economy antidumping methods, product specific safeguards, textile safeguards, and national security-related exceptions.<sup>48</sup> Table 3 summarises the theory and practice of the U.S. effort in monitoring China's WTO compliance.

**Table 3: The Theory to Practice of the U.S. Monitoring of China's WTO Compliance**

<i>Theory</i>	<i>Key concepts</i>	<i>U.S. Practice</i>
Neo-Realist	National interest; Material capacity	Unilateral monitoring; Enforcement of compliance
Liberal Institutionalist	Rules; Regulations; Regimes	WTO's TRM and dispute settlement mechanism; Multilateral co-ordination
Social Constructivist	Shared knowledge; Socialisation; Learning	Capacity building; 'Epistemic community' nurturing

### **How enduring is China's compliance?**

Three questions are central to a discussion of the strength of China's compliance: What has China promised to do to meet its compliance commitments? What has it done so far? And is what it has done so far enough? What China has promised to do to comply with WTO rules can be gleaned from the lengthy documents that it has signed to complete its membership application. Those documents include several protocols laying down China's promises after accession. They include various ways to bring China's trade practices into line with the global trend of trade liberalisation, such as reducing tariffs, increasing transparency, cutting government subsidies, enacting necessary legislation, and instituting administrative organs to enforce those legislation. Copies of these documents can be found on the websites of the WTO, China's Ministry of Foreign Trade and Economic Co-operation, and the U.S.

<sup>48</sup> For details of the workings of these safeguards, see *ibid.*, pp. 14-15.

Department of Commerce,<sup>49</sup> and in many printed publications. A brief summary of China's promises can also be found in a booklet entitled *China in the WTO: what it means for U.S. business*,<sup>50</sup> distributed by the American Embassy in Beijing to U.S. businesspeople.<sup>51</sup> The booklet gives useful summaries of phase-in schedules for tariff cuts across various sectors of industries. It also provides useful links to various sources relating to WTO compliance.

What has China done so far? In view of the enormous task ahead, China started to introduce various reforms during the final stage of entry negotiations in the late 1990s. By the end of year 2000, a year before of its entry, the Ministry of Foreign Trade and Economic Cooperation had reviewed over 1,400 laws, regulations, and other similar documents, including six statutes (of which five were revised), 164 State Council regulations (of which 114 were to be repealed and 25 amended), and 887 of its own ministry regulations (of which 459 were to be repealed and 95 amended). In addition, the Ministry had signed 191 bilateral agreements, 72 bilateral investment treaties, and 93 tax treaties.<sup>52</sup> In the first two months of the year 2001, various ministries and commissions of the State Council were reported to have reviewed some 2,300 laws and regulations, of which 830 were identified as in need of repeal and 325 as in need of revision.<sup>53</sup> It is reported that about 1,000 individual laws are scheduled to be amended to comply with the WTO in the National People's Congress in March 2003.<sup>54</sup>

Five national WTO centres have been established since January 2000, one each in Beijing, Hainan, and Shenzhen, and two in Shanghai. As of mid-2001, more than fifty-four Web sites and 41,438 Web pages relating to WTO existed on the Chinese Internet portal Sina. Yahoo also offered 15 such Web sites and 113,000 WTO Web pages.<sup>55</sup> In addition, numerous private centres have been set up to provide instructions relating to the WTO and the impact of China's entry. Key government departments have established WTO committees to review industry-specific laws under the supervision of the State Council. To meet public demands, a lot of books of different qualities about the WTO have been published and are put on prominent display in major bookstores across the country. All in all, an unprecedented massive learning is going on, more active in the cities than in the countryside.

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<sup>49</sup> See, for example, China's WTO accession document published by the Ministry of Foreign Trade and Economic Cooperation, which can be viewed and downloaded at [www.moftec.gov.cn/moftec\\_cn/wto/wtolaw.html](http://www.moftec.gov.cn/moftec_cn/wto/wtolaw.html).

<sup>50</sup> Distributed by the American Embassy in Beijing and cleared by the Office of the U.S. Trade Representative, October 2001.

<sup>51</sup> A soft copy can be downloaded from the Embassy's website at [www.usembassy-china.org.cn/english/commercial/pdf/wto.pdf](http://www.usembassy-china.org.cn/english/commercial/pdf/wto.pdf) (accessed 7 March 2002).

<sup>52</sup> Nan Xianghong, 'WTO: *fa de chongxin guojia* [WTO: the restructuring of law],' *Nanfang zhoumo* (Southern Weekend), 25 October 2001, quoted in Statement made by Donald C. Clarke before the U.S.-China Commission's Public Hearing on WTO Compliance and Sectoral Issues, 17 January 2002.

<sup>53</sup> *Ibid.*

<sup>54</sup> *South China Morning Post*, 14 February 2003, p. 7.

<sup>55</sup> *Asian Wall Street Journal*, 20-22 July 2001, p. 3.

The *China Business Review*, a periodical published by the U.S.-China Business Council, has provided some useful information about the changes adopted by the Chinese government to comply with WTO rules.<sup>56</sup> Steward and Steward, a U.S. law firm, has been hired by the U.S.-China Commission<sup>57</sup> to prepare a study that will set benchmarks for future efforts to monitor and assess China's WTO compliance. Its managing partner, Terence P. Steward, in a testimony before the Commission in January 2002, gave some detailed information about measures taken by China in complying with WTO rules up to December 2001.<sup>58</sup>

In the end the greatest challenge to China is the building of a legal system that would be compatible with the WTO.<sup>59</sup> Many observers are worried that China, given its rudimentary legal system,<sup>60</sup> may not be able to live up to the standard of responsibility of a normal state and to the compliance standard expected in international trade rules. Indeed China needs time to learn and to get used to the rules of the game. Its trading partners may or may not be willing give it the necessary time to make the required adjustments. Already China has continued to publicise the consequences of its entry into the WTO to the general public, including the impact arising from the passing of so many rules and regulations to comply with the global trading norm. In December 2001 the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) established two WTO-related departments: the Department of WTO Affairs; and the Fair Trade Bureau for Imports and Exports. The Department of WTO Affairs is made up of six offices, each staffed by four to eight people. It stems from an office under MOFTEC's Department of International Trade and Economic Affairs which was responsible for China's bilateral and multilateral negotiations in its bid to become a WTO member over the past fifteen years before its entry. The new department will take charge of China's multilateral negotiations in the new round of trade liberalisation talks of the WTO. The main tasks of the department are to make sure that China carries out its promises in the WTO's

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<sup>56</sup> For details of the Review's assessments of China's compliance from June 2001 to September 2002, see [www.uschina.org/public/wto/#wtocompliance](http://www.uschina.org/public/wto/#wtocompliance) (accessed 4 February 2003).

<sup>57</sup> The Commission was created on 30 October 2000 through the legislation of the Congress. Its purpose is to study, investigate, assess and report to Congress on the economic and security implications of the bilateral economic relations between the U.S. and China. Its works include any actions taken by the Chinese government in the context of the WTO that is adverse or favourable to the national security interests of the U.S. See [www.uscc.gov/txhome.htm](http://www.uscc.gov/txhome.htm) (assessed 15 March 2002).

<sup>58</sup> See [www.uscc.gov/tesste.htm](http://www.uscc.gov/tesste.htm) (accessed 8 March 2002).

<sup>59</sup> This is acknowledged by Yang Jingyu, "'Rushi" yu woguo de fazhi jianshe ["WTO entry" and the building of our country's legal system], *Qiushi* [*Seeking Truth*], March 2002, pp. 32-7. *Qiushi* is periodical published by the Central Committee of the Chinese Communist Party.

<sup>60</sup> The low qualifications of China's judges go a long way to show the country's weak legal system. For example, in 1995, only five per cent of its judges nation-wide had a four-year college degree in any subject (let alone in law). As of mid-2002 it is estimated that about ten per cent of judges have four-year college degrees in law. A study in 1998 of nine basic-level courts (the lowest level) in a major provincial city revealed that only three per cent of the judges had a bachelor's degree in law and that the 'great majority' had had other types of jobs in the court administration such as bailiff, clerk, or driver before being promoted to the rank of judge. See Testimony of Donald Clark, Professor of Law, University of Washington, Seattle, at a hearing of Congressional-Executive Commission on China on 6 June 2002 to consider China's WTO compliance, at [www.cecc.gov/pages/hearings/060602/](http://www.cecc.gov/pages/hearings/060602/) (accessed 28 August 2002).

goods trade and services trade agreements and that the country lays down laws and rules in line with WTO principles. Two offices under the department are responsible for answering WTO's enquiries into China's trade policies and for notifying the WTO of China's policies, laws and rules on trade and investment.<sup>61</sup>

The Fair Trade Bureau, consisting of eight offices with a total of about forty staff members, is responsible for conducting investigations into imports and for determining whether or not anti-dumping, anti-subsidy and protective measures are applicable. The bureau guides and coordinates local companies in responding to foreign charges of dumping and subsidy. It also investigates into other countries' discriminatory trade policies towards China and ensures that Chinese companies enjoy fair trade in the global market through negotiations and consultations with other countries.<sup>62</sup>

To protect its home industries, the State Economic and Trade Commission established in early 2001 an agency called the Investigation Bureau for Domestic Industry Injury to monitor the damage to domestic enterprises due to possible surging imports. This bureau is restructured from the commission's Anti-dumping and Countervailing Office. It is to decide, together with MOFTEC's Fair Trade Bureau, whether to take anti-dumping, anti-subsidy or protective measures against importers.<sup>63</sup> Interestingly, the first case of trade dispute between China and the U.S. after China's entry into the WTO originated from the U.S., not from China. On 20 March 2002 the Bush administration announced the imposition of tariffs of up to thirty per cent on imported steel products, in order to protect the country's ailing steel industry. China filed a complaint on 26 March with the WTO against the U.S. decision.<sup>64</sup> Other steel exporting countries, like Japan, South Korea, Australia, New Zealand, the United Kingdom, and Brazil have either filed similar complaints or demanded consultations with the U.S. government.<sup>65</sup>

Premier Zhu Rongji, in a government report to the National People's Congress on 5 March 2002, said that, starting from 1 January 2002, China's general tariff level had dropped from 15.3 per cent to 12 per cent, and the reduction involved over 5,300 taxable items.<sup>66</sup> Further tariff cuts are planned and are to be implemented in the coming years.

So, is what China has done so far enough? To be sure, how well China's efforts will measure up in the end has yet to be determined. Already many are skeptical about their effectiveness

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<sup>61</sup> 'WTO departments begin work,' [www.xinhuanet.com](http://www.xinhuanet.com), 27 November 2001.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Far Eastern Economic Review*, 4 April 2002, p. 25.

<sup>65</sup> *Asia Times*, 7 March 2002, at [www.atimes.com](http://www.atimes.com) (accessed 17 April 2002).

<sup>66</sup> The full text of Zhu's report can be found at FBIS (Foreign Broadcast Information Service) Translated Text.

when the new trade policies adopted by the central government are being filtered down to provincial levels and below, where the hardships of change are expected to be felt most severely. Full implementation will take time, and the process in the coming years will be a long-term work-in-progress, during which the U.S.-China Commission will review the situation annually, with reports to be submitted to the legislative and executive branches of the U.S. government for their consideration. The WTO too will review annually the situation under the Transition Review Mechanism, as mentioned before. Will China be able to deliver in the near, if not the long-term, future then? This question can only be answered in a speculative way at this stage. In general, many U.S. academics, taking a long-term view and considering China's behaviour in international financial institutions such as the World Bank and the International Monetary Fund in the past twenty years or so, are optimistic that China will largely comply with WTO rules.<sup>67</sup> U.S. traders, demanding quick returns from their investments, are generally less optimistic. U.S. government officials, on the other hand, take a position somewhere in between, giving China certain leeway to adjust initially,<sup>68</sup> while keeping a close eye on China's compliance record, preparing for tough negotiations,<sup>69</sup> and standing ready to put unilateral and multilateral pressures on China when and where necessary. While holding up long-term prospects, the U.S. can expect shocks in the near future as China experiences the pain of change, which may severely test bilateral relations in trade and other areas.<sup>70</sup>

## Conclusion

China's entry into the WTO is arguably *the* most significant peaceful change in the global political economy in the post-Cold War world. As a new member with a socialist tradition, lots of work remain to be done in many areas, including its legal system, intellectual property rights, and agricultural subsidies.<sup>71</sup> On the whole, China seems to have passed its compliance test in the first year of membership pretty well.<sup>72</sup> The future one to four years may prove to be

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<sup>67</sup> Margaret M. Pearson, 'China's track record in the global economy,' *China Business Review*, January-February 2000, Internet ed.

<sup>68</sup> The Asian division vice-president of the U.S. Chamber of Commerce, Myron Brilliant, said that U.S. companies may be tolerant initially but would be less so if the same problems in trade persist for three or four years. See 'China rebuked for failing promises,' *South China Morning Post*, 13 September 2002.

<sup>69</sup> A glimpse of the structure and constraints of this kind of trade negotiations with China can be seen from Liang Wei, 'China's WTO negotiation process and its implications,' *Journal of Contemporary China*, No. 33 (November 2002), pp. 683-719.

<sup>70</sup> Pei Minxin, 'Future shock: the WTO and political change in China,' *Policy Brief*, Carnegie Endowment for International Peace, Washington DC, Vol. 1, No. 3 (February 2001).

<sup>71</sup> China's membership in the WTO is still quite new and many of its most far-reaching obligations will not be phased in until several years later. However, as of July 2002, a U.S. government report has pointed out several areas in which China has failed to meet its commitments, including those covering the Information Technology Agreement, tariff-rate quotas, genetically modified organisms, insurance services, courier services, and export subsidies. See the report to Congress of the U.S. by the China Security Review Commission, July 2002, pp. 12-13 of chapter 3.

<sup>72</sup> For example, Robert Kapp, president of the U.S.-China Business Council, lauded Beijing's moves to introduce tariff reductions in 70% of the categories mandated by the WTO, causing the average tariff rate to drop to 12%

crucial as many of the more painful reforms start to bite. For instance, within two years of joining the WTO, restrictions on many kinds of distribution by foreign retailers must end; and within five years Chinese and foreign banks must compete on an equal footing.<sup>73</sup>

As the volume of trade between China and the outside world grows, commercial frictions are bound to increase. Based on an analysis of some statistics of trade disputes brought before the WTO, two Chinese researchers have arrived at three interesting findings. First, the number of trade disputes is in direct proportion to the volume of trade. Secondly, the number of respondent cases in the WTO trade disputes is also in direct proportion to the market maturity and the rate of increase in trade of the respondent country. Thirdly, the U.S. and European Union governments are far more conversant than developing countries with the mechanics of the WTO's dispute settlement, and therefore developing countries are often left in a defensive, reactive mode. Based on these findings, it is likely that China will end up with increasing number of trade disputes with the U.S. and Europe.<sup>74</sup> Indeed, recent developments largely confirm these findings. As exports rise, China's manufacturers have become the targets of numerous anti-dumping and protectionist complaints.<sup>75</sup> This situation arises mainly out of mistrust among trading nations of each other's intentions and of the conscious need to protect and promote one's own trading interests.

Whether or not China can live up to the expectations of the outside world remains to be seen. Inevitably, a gap would inevitably exist between outsiders' expectations and China's ability to meet those expectations. How to reconcile this difference poses a serious challenge to political leaders on both sides and provides a testing ground for the managerialist and enforcement theorists in compliance studies. For China's trading partners, a balance has to be struck between a 'hard' approach to China's WTO compliance and a 'soft' one. Too hard an

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from 15.3% since accession. See *Far Eastern Economic Review*, 5 December 2002. So did Robert Zoellick, the U.S. Trade Representative, during his visit to China in February 2003. See *The Standard*, 20 February 2003, p. A-6.

<sup>73</sup> *Far Eastern Economic Review*, 5 December 2002. Kapp's testimony before the Trade Policy Staff Committee of the U.S. Trade Representative on 18 September 2002 can be read at [www.uschina.org/public/testimony/testimony13.html](http://www.uschina.org/public/testimony/testimony13.html) (accessed 3 February 2003).

<sup>74</sup> Zhou Xiaoshi and Jin Minli, 'Maoyi zhengduan fengxian wenti de sikao [Probing into trade dispute risks after China's entry into the WTO],' *International Economics and Trade Research*, Guangzhou, No. 1 (2002), p. 32.

<sup>75</sup> Since 1979, about 33 countries have initiated 544 investigations and taken action against 4,000 Chinese export products. In the past 10 years, one in every six global trade disputes involved a product or company in China. In 2001, 17 countries filed a total of 67 cases against companies in China, 55 for allegedly dumping products on the market at cut-rate prices and 12 for selling products beyond agreed quotas. In total a record US\$1.14 billion worth of goods were involved. In 2002, following China's accession to the WTO, 18 countries filed 60 complaints with the trade body over disputed goods worth a total of US\$1 billion. Chief among the complainants were the United States, which filed 14 of the complaints, and India, which filed 13. Disputed products included Chinese steel, vehicle wind-shields, cigarette lighters, machinery parts and various agricultural products. See *South China Morning Post*, 5 February 2003, p. 5.

approach is likely to provoke China's defiance and plays into the hands of its conservative leaders. Too soft an approach, however, may not be able to satisfy the demands of the domestic constituencies of China's trading partners.