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China-U.S. Trade Agreements: Compliance Issues

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Summary

On November 15, 1999, the United States and China completed a bilateral agreement on China's accession to the World Trade Organization (WTO). China agreed to substantially liberalize its markets for U.S. agriculture, manufactured goods, and services. In addition China has completed bilateral trade agreements with 35 other WTO members (an agreement with Mexico is still pending) and is close to completing negotiations with the WTO Working Party handling its WTO application. Once China completes all of its bilateral and multilateral agreements, it will likely join the WTO soon after, and the terms of those agreements will apply equally to all WTO members. China's accession to the WTO would subject China's trade regime to multilateral trade rules, such as most-favored-nation (MFN), or nondiscriminatory, trade status, national treatment for foreign firms, transparency of trade rules, and the use of tariffs, rather than non-tariff barriers, to protect domestic firms (when necessary). The terms of China's WTO membership would be subject to monitoring and review by WTO members, who, in case of Chinese non-compliance with WTO obligations, would be able to bring a complaint before a WTO trade dispute resolution panel for settlement.

Congressional concerns over China's full compliance with its WTO commitments became a factor in the congressional debate over H.R. 4444, a bill that would permanent normal trade relations (PNTR) treatment to China upon its accession to the WTO. Some congressional opponents of PNTR legislation charged that China could not be trusted to implement the WTO agreements, based on the contention that China had failed to fully comply with the terms of past trade agreements made with the United States. Other analysts contended that, while China's compliance with trade agreements had been less than perfect, it did make important strides in fulfilling its trade obligations with the United States. They further contended that the WTO's dispute resolution mechanism would provide a more effective means for the United States to deal with trade disputes than relying on unilateral measures. In order to ensure China's full compliance with its WTO commitments, many Members of Congress called for the establishment of special mechanisms that would closely monitor China's compliance with its WTO commitments. Such measures were included in the final version of H.R. 4444, which passed both Houses and became law on October 10, 2000.

This report addresses five major trade issues and related trade agreements between the United States and China: (1) the 1979 trade agreement providing mutual most-favored-nation (MFN) treatment, (2) the 1992 memorandum of understanding (MOU) on market access, (3) the 1992 and 1995 MOUs on intellectual property rights (IPR), (4) the 1997 MOU on textile quotas and market access, and (5) the 1992 MOU on prison labor exports. It provides an overview of the agreements and summarizes various government and private sector assessments of China's compliance with the agreements. It also discusses issues arising from concerns over how to ensure China's compliance with its trade commitments relating to its accession to the WTO (if and when it enters the WTO), including legislative proposals.

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China-U.S. Trade Agreements: Compliance Issues

China over the past several years has been conducting negotiations with several WTO members, including the United States, to join the World Trade Organization (WTO), the multilateral trade agency that sets rules for most trade. Major progress was made towards China's WTO accession when the United States and China reached a bilateral agreement on November 15, 1999, that would require China, following WTO accession, to substantially lower barriers on agricultural products, industrial goods, and services. China must still complete a trade agreement with Mexico, the last of the original 37 WTO members that requested such negotiations, and finish talks with the WTO Working Party handling China's WTO application, before a vote can be taken in the WTO to admit China.

On October 10, 2000, President Clinton signed into law H.R. 4444 (P.L. 106-268), a bill that would grant PNTR status to China upon its accession to the WTO. The Act, among other things, included provisions to establish mechanisms to monitor and promote China's compliance with its WTO commitments. A major factor in congressional debate over PNTR legislation was whether China could be trusted to fully implement its WTO commitments, and what kind of monitoring and enforcement provisions, if any, were needed to ensure compliance.

Some opponents of PNTR charged that China had a poor record of complying with past trade agreements it has made with the United States and therefore could not be trusted to abide by its WTO commitments. Many proponents of PNTR for China argued that China had generally complied with many or most aspects of the trade agreements, especially in cases where China's compliance was closely monitored and U.S. pressure was brought to bear when compliance was deemed lacking. They also contended that the WTO dispute resolution mechanism would provide an effective means to ensure China's compliance with its WTO trade commitments.

According to the U.S. Department of Commerce, since 1979, the United States and China have concluded 14 trade agreements, including the November 1999 bilateral trade agreement on China's accession to WTO.¹ This report addresses five major trade issues and related trade agreements between the United States and China: (1) the 1979 trade agreement providing mutual most-favored-nation (MFN) treatment², (2) the 1992 memorandum of understanding (MOU) on market access, (3)

¹ U.S. Department of Commerce, Asia Pacific Database, *Trade Openness: China*, February 2000, p. 1.

² In 1998, Congress passed legislation changing the term most-favored-nation(MFN) status to normal trade relations (NTR) status for the purposes of U.S. trade law. For the sake of (continued...)

the 1992 and 1995 MOUs on intellectual property rights (IPR), (4) the 1997 MOU on textile quotas and market access, and (5) the 1992 MOU on prison labor exports. It provides an overview of the agreements and summarizes various U.S. government and private sector assessments of China's compliance with the agreements. It also discusses issues arising from concerns over how to ensure China's compliance with its trade commitments relating to its accession to the WTO (if and when it enters the WTO), including legislative proposals that were introduced in the 106th Congress to address these issues.

The 1979 Agreement on Trade Relations Between the United States and China

U.S. MFN status for China was suspended by specific legislation in 1951. That status was restored in 1980 on a conditional basis, based on the requirements of Title IV of the 1974 Trade Act, as amended, which establishes requirements for restoring and maintaining MFN status for certain non-market economies whose MFN status was suspended by law. One of the requirements for restoring MFN status is the conclusion of a bilateral trade agreement which, among other things, provides mutual non-discriminatory (or MFN) treatment.³ The United States and China reached such an agreement in July 1979, which entered in force in February 1980 (after the conditions under Title IV had been met and the agreement received congressional approval). In order for China's MFN status to remain in effect, the President must, every three years, certify that a satisfactory balance of trade concessions has been maintained during the life of the agreement and that actual or foreseeable reductions in U.S. tariffs and non-tariff barriers to trade resulting from multilateral negotiations are reciprocated.⁴ The President has made such certifications for China triennially.⁵ The most recent extension was made on January 30, 1998, and runs through January 2001.⁶

² (...continued)

consistency, the term MFN status is used throughout this report.

³ The agreement must also contain provisions pertaining to possible termination of the agreement (such as due to national security interests), safeguard arrangements, protection of intellectual property rights, arrangements for the settlement of commercial disputes, arrangements for the promotion of trade, and procedures for consultations over the agreement. Title IV also requires that certain freedom of emigration requirements (under the so-called Jackson-Vanik amendment) be met before MFN status is restored.

⁴ In addition, the Jackson-Vanik requirements must be met on an annual basis.

⁵ Such certification does not require that China afford the United States the same trade treatment that the United States gives to Chinese products (e.g., China does not have to charge the same tariffs on goods from the United States that the United States charges on imports from China). Instead, it requires China to give the same treatment to U.S. imports that it gives to other countries.

⁶ See CRS Report, *Most-Favored-Nation Status of the People's Republic of China*, by Vladimir Pregelj, August 27, 1999, p.2.

In a 1996 letter to Representative Nancy Pelosi, U.S. Trade Representative (USTR) Charlene Barshefsky stated that the 1979 U.S.-China bilateral agreement on trade relations is:

...the foundation of the U.S. economic relationship with China, and includes basic rules for conducting commercial transactions between our countries. These rules encompass matters ranging from customs rules and procedures, to providing facilities for banking and financial transactions, to business facilitation activities and ensuring that we receive MFN treatment under laws affecting the sale, purchase, distribution and use of imported products in our domestic markets. A key element of the 1979 Agreement is the obligation to exchange information and consult on problems arising in our bilateral trade relationship. The United States has been able to call upon this commitment to initiate consultations to resolve trade disputes with China.⁷

Many Members of Congress have questioned whether the United States is receiving “a satisfactory balance of trade concessions” from China. They cite the sharp deterioration in the U.S. balance of trade with China, which went from a \$2.7 billion surplus in 1980 to a \$68.7 billion deficit in 1999 (**see table 1**). Many argue that China’s pervasive trade barriers, restrictive investment policies, and failure to protect U.S. intellectual property rights (IPR) in China substantially diminish U.S. trade and investment opportunities in China (while U.S. markets are open to Chinese goods), and they have pressed the executive branch to take action against China, such as utilizing U.S. trade laws (e.g., *Section 301* and *Special 301*), to induce China to eliminate such unfair trade practices.⁸

⁷ Inside U.S. Trade, *Text: Barshefsky Letter on China*, July 5, 1996 (available on www.insidetrade.com).

⁸ Despite Chinese trade barriers, U.S. exports to China have risen sharply, from \$3.8 billion in 1980 to \$13.1 billion in 1999. China was the 12th largest U.S. export market in 1999 and was an important market for several U.S. export industries, such as aircraft and machinery. Still, many analysts argue that U.S. exports to China would be substantially higher if trade restrictions were removed.

Table 1. U.S. Merchandise Trade with China: 1980-1999
(\$ in billions)

Year	U.S. Exports	U.S. Imports	U.S. Trade Balance
1980	3.8	1.1	2.7
1981	3.6	1.9	1.7
1982	2.9	2.3	0.6
1983	2.2	2.2	0.0*
1984	3.0	3.1	-0.1
1985	3.9	3.9	0.0*
1986	3.1	4.8	-1.7
1987	3.5	6.3	-2.8
1988	5.0	8.5	-3.5
1989	5.8	12.0	-6.2
1990	4.8	15.2	-10.4
1991	6.3	19.0	-12.7
1992	7.5	25.7	-18.2
1993	8.8	31.5	-22.8
1994	9.3	38.8	-29.5
1995	11.7	45.6	-33.8
1996	12.0	51.5	-39.5
1997	12.8	62.6	-49.7
1998	14.3	71.2	-56.9
1999	13.1	81.8	-68.7

* The U.S. had a trade deficit with China, but it was less than \$100 million.

Source: U.S. Department of Commerce.

Market Access

U.S. officials have held negotiations with China over the past several years regarding U.S. concerns over Chinese restrictive trade and investment barriers. In April 1991, the Bush Administration initiated a Section 301 case against four significant unfair trading practices affecting U.S. exports to China:

- ! selected product-specific and sector-specific import prohibitions and quantitative restrictions;
- ! selective restrictions on imports made effective through restrictive import license requirements;

- ! selected technical barriers to trade, including standards, testing and certification requirements, and policy toward phytosanitary and veterinary standards that create unnecessary obstacles to trade; and
- ! failure to publish laws, regulations, judicial decisions, and administrative rulings of general application pertaining to customs requirements, restrictions, or prohibitions on imports or affecting their sale or distribution in China.

The Section 301 case against China was highly unusual due to its breadth of coverage. Most Section 301 cases involve investigations of certain trade restrictions on specific products. However, the China Section 301 case was the most sweeping market access investigation in the USTR's history. It was essentially aimed at substantially reforming China's entire trade regime. In addition, the USTR linked U.S. support for China's re-entry into the General Agreement on Tariffs and Trade (GATT) to a successful resolution of the trade dispute.⁹

On Aug. 21, 1992, the USTR determined that negotiations had failed to resolve the trade dispute and threatened to impose \$3.9 billion in U.S. trade sanctions unless an agreement was reached by Oct. 10, 1992. The proposed sanctions were the highest level ever issued by the USTR under a Section 301 case. China in turn threatened retaliation against a comparable level of U.S. products.

On Oct. 10, 1992, the United States and China reached an agreement settling the Section 301 case. Under a Memorandum of Understanding (MOU), China pledged to (1) reduce or eliminate a wide variety of trade barriers over the next five years (according to specific timetables), including tariffs, quotas, import restrictions, import licenses (covering over 1,200 products); (2) take a number of specified steps to make its trade regime more transparent, such as publishing its trade laws and regulations; (3) eliminate import substitution laws and policies; and (4) apply sanitary and phytosanitary (SPS) regulations on agricultural products based on sound science (within one year) and remove discriminatory standards and testing requirements on non-agricultural products. For its part, the United States pledged to "staunchly support" China's entry into the GATT and to reduce export controls on computer and telecommunications equipment exports to China.¹⁰

In late 1993, the USTR charged that China had failed to implement the market access agreement and warned that the United States would impose trade sanctions against China unless it took steps to abide by the agreement by the end of the year.¹¹ A U.S. State Department report stated that by December 31, 1993, China had lowered tariffs on 2,898 items and had eliminated non-tariff restrictions on 283 items.

⁹ The GATT in 1995 became the World Trade Organization (WTO).

¹⁰ Major exports affected by the agreement included chemicals, computers, integrated circuits, medical equipment, autos and auto parts, machinery products, telecommunications equipment, instant film and instant cameras, steel products, photocopiers, beer, wine, distilled spirits, and mineral waters.

¹¹ *Inside U.S. Trade*, November 3, 1993.

In addition, in June 1994, China eliminated 208 non-tariff barriers, including a number ahead of, or in addition to, the schedule set in the MOU.¹²

Failure on the part of China to gain status as a founding member of the WTO at the end of 1994 led China to subsequently announce that it would no longer abide by the market access agreement because of the U.S. position on conditions for China's entry into the WTO. However, following the signing of the U.S.-Chinese agreement on IPR in March 1995 (see below), U.S. and Chinese officials announced that an agreement had been reached in which China would resume its implementation of the 1992 market access MOU by the end of March 1995 and that talks would be held with the United States concerning liberalizing China's markets for telecommunications services and insurance.¹³

Assessments of Chinese Compliance With the 1992 MOU

In January 1994, the USTR determined that, to date, China was "substantially in compliance" with the 1992 market access agreement. In January 1995, GAO issued a report examining China's compliance with the 1992 agreement. Based on interviews with U.S. government and industry officials, GAO stated that the Chinese government had complied overall with the provisions regarding transparency and tariff and non-tariff barriers, although a number of significant problems remained in these areas.¹⁴ According to the report, USTR officials told GAO that they believed that China no longer maintained import substitution policies. However, GAO noted the growing pressure from the Chinese government to force foreign firms to increase local content (i.e., the share of the value of the product made locally) for certain operations in China. GAO found that China's implementation of the agricultural standards provisions had been slow and that China continued to use such barriers to restrict U.S. imports.¹⁵ Finally, GAO noted that resistance to central government regulations by provincial and local governments, as well as central government ministries seeking to protect the industries under their jurisdiction, impeded the full implementation of the market access MOU.¹⁶

In congressional testimony in 1996, (then Acting) USTR Charlene Barshefsky drew similar conclusions over China's compliance with the 1992 MOU on market access. She stated that "to its credit, China has done much to implement the

¹² U.S. Department of State, *Country Reports on Economic Policy and Trade Practices*, February 1995, p. 43.

¹³ This appears to have delayed somewhat the implementation of China's reduction of trade barriers. China's removal of trade barriers in July 1995 were five months behind schedule. Ibid, p.45

¹⁴ GAO noted that despite improvements, transparency in China's trade laws and regulations was still far from perfect, and that non-transparency was one of the most cited problems of doing business in China by U.S. firms survey by GAO. In the case of non-tariff barriers, GAO observed that China removed some barriers but then instituted new ones.

¹⁵ GAO, *U.S.-China Trade: Implementation of Agreements on Market Access and Intellectual Property*, January 1995, pp 18-25.

¹⁶ Ibid, p. 31.

agreement,” such as eliminating tariff and non-tariff barriers and making its trade regime more transparent. However, compliance in other areas was lacking:

While China has removed a substantial number of non-tariff barriers, we are concerned with China’s tendency to give with one hand and take away with the other. In some instances, China has substituted new barriers in the place of those removed. For example, quotas have been replaced with “tendering requirements” or “registration requirements. “ In sectors such as medical equipment and film, new regulations have prevented the market access we anticipated as a result of the 1992 agreement. China must live up to its agreement and eliminate those impediments to fair trade.¹⁷

Barshefsky also criticized China for failure to remove trade barriers on U.S. agricultural products (such as wheat and citrus), as specified under the agreement, saying:

If I could pick one area under it where we are dissatisfied, seriously dissatisfied, I would say it is in the agricultural sector.¹⁸

The 1992 market access MOU was supposed to have been fully implemented by December 31, 1997. The USTR’s 1998 Foreign Trade Barriers Report made the following observations on areas where China’s compliance with the market access was lacking:¹⁹

- ! **Non-tariff barriers.** China has generally met the requirements of the 1992 MOU to remove various explicit non-tariff barriers on products specified under the MOU.²⁰ However, China still maintains a large number of non-tariff administrative controls (such as registration requirements) to implement its industrial policies, which tend to act as a new de facto licensing requirement. About 400 of the products covered by the 1992 agreement are subject to these registration requirements.²¹
- ! **Transparency.** While China has significantly improved the transparency of its trade regime since 1992, several problems remain. For example, the coverage of Chinese trade publications of new

¹⁷ Testimony of Ambassador Charlene Barshefsky Before the U.S. House Ways and Means Committee, Subcommittee on Trade, September 19, 1996.

¹⁸ Ibid.

¹⁹ In April 1999, China agreed to remove SPS restrictions on U.S. exports of Northwest wheat, citrus, and meat exports to China. Other trade policies pertaining to transparency in trade laws, non-tariff barriers, SPS restrictions, and import substitution laws were addressed in the November 1999 U.S.-China WTO agreement and are also being considered in the WTO Working Party handling China’s accession application.

²⁰ Various USTR reports indicate that China removed over 1,000 quotas and licenses. However, in some instances, certain non-tariff barriers were not removed on schedule.

²¹ USTR, *1998 National Trade Estimate Report on Foreign Trade Barriers*, 1998, p.48.

regulations is often incomplete and not always timely. U.S. firms often have difficulty learning which regulations apply to their operations in China.²² The lack of regulatory transparency and few implementing regulations continue to inhibit the entry of foreign goods and services. Moreover, publication of trade-related laws and regulations does not always precede implementation. For example, information on China's import quotas, crucial for foreign and domestic traders, has yet to be published on an itemized basis.

- ! **Import substitution laws.** China claims that it no longer utilizes import substitution policies. However in 1994, the Chinese government announced an "Auto Industry Policy" that included import substitution requirements. The government policy directed that autos and auto parts should be purchased from Chinese producers and that all automotive and component manufacturers in China should strive for complete localization of production. The policy required producers to include a minimum amount of local materials and value added work in their final products. Foreign joint venture vehicle assemblers are required to begin with 40% local content, achieve 60% by the second year of production, and 80% the following year. In 1996, the government issued policies on pharmaceutical pricing that discriminated against foreign producers and embodied an import substitution policy.²³

- ! **Sanitary and phytosanitary (SPS) issues.** Since 1992, China has made some progress in removing SPS restrictions on certain U.S. agricultural items through the signing of bilateral protocols for live horses; apples from Washington, Oregon, and Idaho; ostriches, bovine embryos, swine and cattle; cherries from Washington; and grapes from California. However, SPS measures continued to bar imports of U.S. citrus, plums, and Pacific Northwest wheat.²⁴ In addition, China's standards system often lacks transparency and is unevenly applied (i.e., different standards are used for imports from different countries, and standards for imports differ from those applied to domestically produced products). Finally, many such standards are not based on sound science.²⁵

²² Ibid, p. 48.

²³ Ibid, p. 49. The *2000 USTR Foreign Trade Barriers Report* stated that China had also developed import substitution policies for generic medicines, telecommunications equipment, and power generating equipment.

²⁴ These issues were reportedly resolved in April 1999 when the United States and China reached an agreement on agricultural cooperation. China agreed to immediately remove import restrictions on U.S. Pacific Northwest wheat, citrus, and meat products. However, according to U.S. officials, China has only recently begun to implement the agreement. See *U.S. Department of Agriculture Release*, March 22, 2000.

²⁵ Ibid., pp. 50-51.

Violations of U.S. Intellectual Property Rights

Section 182 of the Trade Act of 1974 as amended (also known as Special 301), requires the USTR to identify and investigate “priority foreign countries” that fail to provide adequate and effective protection of U.S. IPR (such as patents, copyrights, trademarks, and trade secrets) or deny fair and equitable market access to U.S. firms that rely on IPR protection. The USTR is directed to seek negotiations with the priority nations to end such violations and, if necessary, impose trade sanctions.

The 1979 U.S.-China bilateral trade agreement calls for each nation to offer copyright, patent, and trademark protection equal to the protection correspondingly accorded in the other country. In 1985, U.S. officials expressed concern over IPR protection in China during talks held under the auspices of the U.S.-Chinese Joint Commission on Commerce and Trade (JCCT), and similar concerns were raised in market access negotiations begun in 1987. Concerns over Chinese IPR protection led the USTR to place China on its Special 301 “priority watch list” in 1989 and 1990.²⁶

The 1992 IPR Agreement

In April 1991, China (along with India and Thailand) was named as a “priority foreign country” under Special 301, and in May 1991, the USTR began a Section 301 investigation of four specific deficiencies in China’s IPR practices: (1) failure to provide product patent protection for chemicals, pharmaceuticals, and agrochemicals; (2) lack of copyright protection for U.S. works not first published in China; (3) deficient levels of protection under Chinese copyright law and regulations; and (4) inadequate protection of trade secrets. In November 1991, the USTR threatened to impose \$1.5 billion in trade sanctions if an IPR agreement was not reached by January 1992. Last-minute negotiations yielded an agreement on January 16, 1992. China promised to strengthen its patent, copyright, and trade secret laws, and to improve protection of U.S. intellectual property, especially computer software, sound recordings, chemicals, and pharmaceuticals.

The 1995 IPR Agreement

In 1994, the USTR determined that China had met most of the conditions of the 1992 agreement, namely the establishment of new laws and regulations protecting

²⁶ The USTR annually issues a three-tier list of countries which are considered to maintain inadequate regimes for the protection of U.S. IPR or deny market access: (1) *priority foreign countries* which are considered to be the worst violators of U.S. IPR and are subject to Section 301 investigations and possible U.S. trade sanctions; (2) *priority watch list countries* which are considered to have serious deficiencies in their IPR regime, but do not currently warrant a Section 301 investigation; and (3) *watch list countries* which have been identified because they maintain IPR practices or barriers to market access that are of particular concern, but do not yet warrant higher level designations. In addition, the USTR has made “out-of-cycle” decisions throughout the year concerning the IPR regimes of particular countries, including the designation of countries as *priority foreign countries* and the imposition of trade sanctions for IPR violations.

IPR, but failed to enforce such laws.²⁷ As a result, in June 1994, the USTR again designated China as a Special 301 “priority foreign country.” According to then-USTR Mickey Kantor, China’s enforcement of its laws was sporadic at best and virtually non-existent for copyrighted works. The USTR cited the establishment of 26 factories in China producing pirated compact and laser disks (producing 75 million CDs per year, of which about 70 million were exported) as an example of China’s “egregious” violation of U.S. IPR. In addition, the USTR stated that China maintained a myriad of hidden quotas and non-transparent regulations that restricted access to China’s market for U.S. movies, videos, and sound recordings, and that such restrictions encouraged piracy of such products in China.²⁸ When negotiations failed to produce a new agreement, the USTR on February 4, 1995 issued a list of Chinese products, with an estimated value of \$1.1 billion, which would be subject to U.S. import tariffs of 100%. However, a preliminary agreement was reached on February 26, 1995, and a formal agreement was signed on March 11, 1995. The new agreement pledged China to substantially beef up its IPR enforcement regime and to remove various import and investment barriers to IPR-related products. Specifically, China agreed to:

- ! Take immediate steps to stem IPR piracy in China over the course of the next three months by taking action against large-scale producers and distributors of pirated materials, and prohibiting the export of pirated products.
- ! Establish mechanisms to ensure long-term enforcement of IPR laws, such as banning the use of pirated materials by the Chinese government, establishing a coordinated IPR enforcement policy among each level of government, beefing up IPR enforcement agencies, creating an effective customs enforcement system, establishing a title verification system in China to ensure that U.S. audio visual works are protected against unauthorized use, reforming China’s judicial system to ensure that U.S. firms can obtain access to effective judicial relief, establishing a system of maintaining statistics concerning China’s enforcement efforts and meeting with U.S. officials on a regular basis to discuss those efforts, improving transparency in Chinese laws concerning IPR, and strictly enforcing IPR laws.
- ! Provide greater market access to U.S. products by removing import quotas on U.S. audio visual products, allowing U.S. record companies to market their entire works in China (subject to Chinese

²⁷ A January 1995 General Accounting Office (GAO) report noted that China had amended its patent law, issued copyright regulations, joined international copyright conventions and enacted protection for trade secrets. However, China made little progress in establishing the legal and administrative framework that would provide effective procedures and remedies to address IPR infringement and to deter further infringement. See GAO, *U.S.-China Trade: Implementation of Agreements on Market Access and Intellectual Property*, January 1995, p. 39.

²⁸ *Inside U.S. Trade*, July 1, 1994, p. 6.

copyright concerns), and allowing U.S. intellectual property-related industries to enter into joint production arrangements with Chinese firms in certain cities.

Several U.S. firms charged that IPR piracy in China worsened in 1995, despite the 1995 IPR agreement, and pressed the USTR to take tougher action against China. The International Intellectual Property Alliance (IIPA), an association of eight U.S. copyright-based industries, called on the USTR to impose sanctions against China unless it agreed to fully implement the 1995 IPR agreement. A February 1996 IIPA press release stated: “Illegal CD and other factories continue to produce and export pirate product, and China has not opened its markets to U.S. copyright industries as promised.”²⁹ IPR-related industries estimated that IPR piracy by Chinese firms cost U.S. firms \$2.2 billion in lost trade during 1995.³⁰ The USTR’s *1996 Foreign Trade Barriers Report* stated: “By early 1996, it was clear that China made significant and, in some localities, effective efforts in the retail sector within China to begin to reduce piracy and counterfeiting. However, effective action against producers and major distributors of pirated audiovisual and computer software products has been lacking.” The USTR report further stated that exports of pirated products in third markets continued at the same or even higher levels than before the 1995 IPR agreement.³¹

The 1996 Chinese Action Plan

On April 30, 1996, the USTR again designated China as a Special 301 “priority foreign country” for not fully complying with the February 1995 IPR agreement. According to the USTR, while China had cracked down on piracy at the retail level (launching raids and destroying millions of pirated CDs and hundreds of thousands of pirated books, sound recordings, and computer software), it had failed to take effective action against an estimated 34 or so factories in China that were mass-producing and exporting pirated products. U.S. officials called on the Chinese government to close such factories, prosecute violators, and destroy equipment used in the production of pirated products. Further, the USTR stated that China had failed to establish an effective border enforcement mechanism within its customs service to prevent the export of pirated products. Finally, the USTR indicated that China had failed to provide sufficient market access to U.S. firms, due to high tariffs, quotas, and regulatory restrictions. Shortly after, the USTR indicated it would impose U.S. sanctions on \$2 billion worth of Chinese products by June 17, 1996, unless China took more effective action to fully implement the IPR agreement.

On June 17, 1996, (then acting) USTR Charlene Barshefsky announced that the United States and China had reached an accord on China’s implementation of the 1995 agreement. The accord outlined steps that China had recently taken to enforce the IPR agreement (such as the closing of 15 plants producing illegal CDs, several seizures of pirate CDs, VCDs, and LDs by Chinese customs officials, and the issuance of new regulations directing government agencies to seek out and close illegal plants)

²⁹ IIPA press release, February 20, 1996, p.1.

³⁰ USTR, *1996 National Trade Estimate Report on Foreign Trade Barriers*, 1996, p. 54.

³¹ *Ibid.*

and China's pledge to extend a period of focused enforcement of anti-piracy regulations against regions of particularly rampant piracy, such as Guangdong Province. The Chinese government also promised to improve border enforcement to halt exports of pirated products as well as illegal imports of presses used to manufacture CDs, open up its market to imports of IPR-related products, and improve monitoring and verification efforts to ensure that products made by Chinese CD plants and publishing houses were properly licensed. Finally, the Chinese government reaffirmed that public and private sector entities would use only legitimate software.³²

In April 1997, the USTR reported that, following the June 1996 accord, China had "made significant progress in combating IPR violations," including the closure of nine factories and 28 illegal production facilities, and confiscation of millions of unauthorized LDs, CDs, and VCDs and other publications, increased checks on IPR-related cases, significantly strengthened border enforcement against IPR-related smuggling, and improved market access for certain U.S. IPR-related industries. The USTR stated: "The Administration commends China for taking these promising steps on effectively enforcing IPRs."³³

Recent Assessments of China's Compliance With IPR Agreements

In February 2000, the USTR stated that over the past couple of years China has made great strides in improving its IPR protection regime, noting that it has passed several new IPR-related laws, closed 80 assembly operations for illegal production lines, seized millions of illegal audio-visual products, curtailed exports of pirated products, improved customs enforcement, expanded training of judges and law enforcement officials on IPR protection and established special IPR courts, and has expanded legitimate licensing of film and music production in China.³⁴ In April 1999, the USTR announced that the Chinese government had issued a new high-level directive to all Chinese government entities directing that they use only legitimate computer software, a move described by the USTR as a "milestone in China's efforts to increase intellectual property protection."³⁵ According to the USTR's *2000 Foreign Trade Barriers Report*, prior to the U.S.-China agreements on IPR, China was one of the world's IPR pirates and a major exporter of pirated products. Since then, China has improved its legal framework for IPR enforcement and has "virtually shut down the illegal production and export of pirated music and video CDs and CD ROMs." In addition, China has made enforcement of IPR part of its anti-crime campaign and has been conducting a nationwide anti-piracy campaign. However, the USTR noted that resistance from the provincial and local level has undermined central government efforts to implement IPR reforms.

³² USTR *IPR Piracy Fact Sheet*, June 17, 1996.

³³ USTR, *1997 National Trade Estimate Report on Foreign Trade Barriers*, 1997, p. 53.

³⁴ USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, 2000, pp. 61-62.

³⁵ USTR Press Release, April 7, 1999.

In April 2000, the U.S. Interactive Digital Software Association (IDSA), a trade body representing U.S. video and computer game software companies, stated that the Chinese government, over the past two years, has “mostly lived up to their obligations under the 1995 agreement and the 1996 action plan to close down pirate optical media production and halt exports.” However, IDSA noted that IPR piracy in China’s domestic markets remains a serious problem, estimating the rate of IPR piracy for computer and video games at 95% and costing U.S. firms \$1.3 billion annually. Of particular concern to IDSA has been a massive increase in imports into China (from such sources as Hong Kong and Taiwan) of pirate products, which has acted to offset many of the gains made in closing illegal plants in China. The IDSA has also stated that China uses vague cultural standards to restrict certain imports.³⁶ Finally, IDSA noted that IPR enforcement remained a serious problem. However, the IDSA states: “the fact that enormous piracy and market access problems in China persist does not mean that China is not taking the problem more seriously, or that no progress has been made, or that there is not an improved attitude in China toward addressing the issue. To the contrary, we believe there has been progress and there are signs China recognizes additional steps are required.”³⁷

The IIPA estimates that IPR piracy in China cost U.S. firms \$1.7 billion in lost sales in 1999—an improvement over 1998 losses which were estimated at \$2.6 billion. However, while China has continued to maintain significant enforcement actions against IPR piracy, the IIPA states that such enforcement is hampered by the failure of the government to take sufficient action against criminal, followed by deterrent penalties against well organized pirates. IIPA notes that China has largely ceased exporting pirated products but has developed a major domestic piracy problem along with an increase in pirated imports. In addition, the piracy rate for music and sound recordings rose from 56% in 1998 to 90% in 1999.³⁸

In 1999, the U.S. Embassy in Beijing reported that China’s IPR efforts had produced mixed results:

China has made significant progress in protecting intellectual property rights (IPR), but still faces major problems. On the one hand, a respectable (but not perfect) IPR legal system is in place, along with government agencies handling copyright, patent, trademark, and enforcement matters. At the same time, fueled by unemployed workers, and boosted by a lack of market access for legitimate products, smuggling and counterfeiting continue at a high rate, often swamping enforcement efforts.³⁹

³⁶ According to the ISDA, China requires foreign firms to submit their software for content screening to a Software Approval Board.

³⁷ Testimony of Douglas Lowenstein, Interactive Digital Software Association on Permanent Normal Trade Relations With China before the Senate Finance Committee, April 6, 2000.

³⁸ IIPA, *2000 Special 301 Report: People’s Republic of China, 2000*, February 18, 2000, p. 26

³⁹ U.S. Department of Commerce, International Trade Administration, International Market Insight Report, *Intellectual Property Rights: China*, March 24, 1999, p. 1.

The U.S. Embassy observed that, despite improvements in IPR protection in China, “IPR violations continue on a massive scale.” It was noted that effective enforcement action is often hampered by local protectionism, lack of training of judicial officials, and corruption.⁴⁰

In reaction to continued IPR problems, over 20 U.S. companies in China recently formed an informal coalition to draw the attention of Chinese and U.S. government authorities to the counterfeiting problem in China and to propose ways of strengthening enforcement. These companies estimate their annual losses due to counterfeiting at over \$1 billion. Limited market access for products such as foreign movies and computer software, and relatively small fines for persons convicted of piracy are viewed as major incentives for smugglers and counterfeiters. Some U.S. companies have devoted considerable on-the-ground resources to combating IPR violations, with mixed results.⁴¹ For example, Gillette China, which estimates \$20 million in revenue losses due to piracy, won a 2-year court case against a razor blade counterfeiter, who was fined the equivalent of only \$2,400 after he pled guilty.⁴²

Illegal Textile Transshipments and Market Access Issues

China is a major source of U.S. textile and apparel imports. Chinese textile and apparel exports to the United States are limited by U.S. quotas established under a bilateral agreement with China. The most current agreement was reached in February 1997 and is effective over four years.⁴³

The U.S. Customs Service has found evidence in the past that China has attempted to circumvent U.S. quotas by transshipping Chinese textile and apparel products through Hong Kong and Macau as well as through a number of countries, to the United States using false country of origin labels and through mis-classification of textile and apparel products.⁴⁴

In July 1993, then-USTR Mickey Kantor announced the creation of an interagency task force to fight textile and apparel transshipments. He estimated that

⁴⁰ Ibid, p. 2.

⁴¹ U.S. Department of Commerce, International Trade Administration, *Country Commercial Guide: China, FY 2000*, July 15, 1999.

⁴² *Far Eastern Economic Review*, March 23, 2000, p. 47.

⁴³ Under the November 1999 U.S.-China WTO agreement, the United States agreed to end its textile and apparel quotas on Chinese products in 2005, while China agreed to allow the United States to utilize a special safeguard provision (once China entered the WTO) until 2008 that would allow it to impose restraints on textile and apparel imports from China if such imports caused market disruptions to U.S. domestic producers.

⁴⁴ While Hong Kong and Macau are now part of China, they maintain autonomy over their economic systems; the United States maintains separate textile quota agreements with them.

such transshipments from China alone totaled \$2 billion annually.⁴⁵ During 1993 and 1994, U.S. officials sought to include specific enforcement provisions against transshipments during negotiations to extend the U.S.-China textile and apparel agreement. Under the threat of reduced quota levels, China in January 1994 agreed to a textile agreement allowing U.S. officials to inspect Chinese factories and, if China repeatedly circumvented the agreement by shipping goods through other countries, impose penalties against Chinese quotas equal to three times the amount of the transshipment.⁴⁶

Evidence of transshipments has led the United States on a number of occasions to reduce China's textile quotas on certain products. Between 1994 and 1996, the United States imposed \$80 million in charges against China's textile quotas, including approximately \$19 million in punitive triple charges against China's 1996 quota allowance. The 1997 agreement also allowed the United States to impose triple charges if evidence of extensive transshipment was found. On May 5, 1998, the USTR announced that it would impose \$5 million in triple charges against China's textile quotas due to persistent Chinese textile transshipments. A USTR official testified in June 1998 that the Chinese government "appears to be making progress in preventing transshipment."⁴⁷

The 1997 U.S. China textile agreement contained a market access provision. China agreed to reduce and bind (i.e., they cannot be increased in the future) tariffs at applied rates and to ensure that non-tariff barriers do not impede the achievement of improved access. China agreed to phase in the tariff cuts beginning by December 31, 1997 and ending by December 31, 2000 (with most cuts occurring in 1997 and 1998). An official from the Department of Commerce stated that, overall, China has complied with these tariff reductions (with a few minor exceptions out of about 900 tariff lines).⁴⁸

To date, however, it does not appear that China's tariff reductions have had a significant impact on U.S. textile and apparel exports to China, as indicated in **Table 2**. U.S. textile and apparel exports to China fell from \$8,716 million in 1997 to \$8,657 million in 1998 (the first year in which tariff cuts took effect), but rose to \$8,889 million in 1999 (a 2.7% increase over 1998 exports).⁴⁹

⁴⁵ *Inside U.S. Trade*, August 6, 1993.

⁴⁶ *Inside U.S. Trade*, January 21, 1994.

⁴⁷ Prepared testimony of Susan Esserman, General Counsel, USTR, before the House Ways and Means Committee on Renewal of MFN Tariff Status for China, June 17, 1999.

⁴⁸ Phone conversation with Linda Shelton, U.S. Department of Commerce, April 18, 2000.

⁴⁹ Overall U.S. exports to China from 1998 to 1999 fell by 8.0%.

**Table 2. U.S. Exports of Textile and Apparel Products to China:
1996-1999**
(\$ in millions)

	1996	1997	1998	1999	Percent Change 1998-1999
Apparel and Related Products	6,781	7,994	7,995	8,233	5.6
Textile Mill Products	418	618	582	581	-0.2
Man-Made Fibers	152	104	80	85	6.3
Total	7,351	8,716	8,657	8,889	2.7

Source: U.S. Department of Commerce.

Prison Labor Exports

Many human rights activists charge that the use of forced labor is widespread and a long-standing practice in China, and that such labor is used to produce exports, a large portion of which may be targeted to the United States. The importation from any country of commodities produced through the use of forced labor is prohibited by U.S. law, although obtaining proof of actual violations for specific imported products is often extremely difficult.

On August 7, 1992, the United States and China signed an MOU to ensure that prison labor products were not exported to the United States.⁵⁰ According to U.S. officials, China's initial implementation of the agreement was "spotty." Chinese officials were slow to respond to U.S. requests for information and to visit suspected sites.⁵¹ The United States sought to establish specific guidelines for the implementation of the MOU. This led to the signing of a "statement of cooperation" (SOC) on March 14, 1994 that, among other things, included timetables for responding to requests for information and site visits to production facilities suspected of exporting prison labor products. According to the U.S. State Department, the SOC "fostered a more productive relationship between (U.S.) Customs and the (Chinese) Ministry of Justice."⁵² Between March 1994 and April 1995, Customs was allowed to visit five facilities in China, but China turned down several other requests to visit other sites. President Clinton's report to Congress on renewing China's MFN

⁵⁰ The agreement provided for prompt investigation of suspected prison labor exports, exchanges of information on law enforcement efforts, meetings between officials of the two sides, the furnishing of evidence that can be used in proceedings against violators, and the prompt facilitation of visits to relevant facilities upon the request of either party.

⁵¹ Testimony of Jeffrey A. Bader, Deputy Assistant Secretary for East Asian and Pacific Affairs before the Senate Foreign Relations Committee, May 21, 1997, p. 2.

⁵² Ibid, p. 2.

status in May 1994 stated that China had generally abided by the agreements on prison labor.

However, China's cooperation with the United States on prison labor decreased following the visit of Taiwan President Lee Teng-hui to the United States in the Spring of 1995; the Chinese government refused all U.S. requests for site visits throughout the rest of 1995. In 1996 Chinese authorities granted access to one prison labor facility requested by U.S. Customs, and to two sites in 1997 (at which time no evidence of prison labor was found). The U.S. Department of State's *1998 China Country Report on Human Rights Practices* states that: "Although the signing of the SOC initially helped foster a more productive relationship between the U.S. Customs and Chinese authorities, cooperation overall has been inadequate."⁵³ According to the *1999 China Country Report on Human Rights*, during 1999, U.S. Customs unsuccessfully pursued several standing requests to visit eight sites suspected of exporting prison labor products (one of which dated back to 1992, and several dating back to 1994), and renewed requests (several dating back to 1994) for the Chinese Ministry of Justice to investigate seven factories and three penal facilities for evidence of prison labor exports; none of these requests have been granted.⁵⁴

Provisions to Promote Chinese WTO Trade Compliance

Ensuring China's full compliance with its WTO obligations (if and when it joins the WTO) became an important factor in congressional debate over whether to extend PNTR status to China. Many Members expressed concern over whether the Chinese government would be willing, as well as able, to fully implement the trade liberalization measures it agreed to in order to join the WTO. For example, some analysts contended that WTO reforms in the short run could cause widespread employment disruptions in China (as many inefficient Chinese firms are forced into bankruptcy due to increased foreign competition). They argued that order to maintain social stability, the Chinese government might decide to delay or roll back the implementation of economic reforms. Other analysts contended that the rule of law is very weak in China and that it might be very difficult for the central government to ensure that local government officials, as well as trade and industry ministers in the central government, implement rules and regulations that are consistent with China's WTO obligations. Another concern expressed was that China might (as it did in the past) remove barriers specified under the WTO trade agreements, but then attempt to replace them with new barriers not specifically addressed by those agreements.

In response to a question to Secretary of Commerce William Daley on his expectations of China's compliance with its WTO trade commitments during congressional hearings in April 2000, Daley responded:

⁵³ *1998 China Country Report on Human Rights Practices*, February 26, 1999, p.48.

⁵⁴ U.S. Department of State, *1999 Country Reports on Human Rights Practices: China*, February 25, 2000, pp. 51-52.

I think it will be difficult for them, I think it will be difficult for us. I do not pretend to think that this implementation of this agreement by the Chinese will be easy for them, and I would assume that we will have to, in the next administration, have to be very aggressive in their enforcement of the commitments that have been made.⁵⁵

The Clinton Administration's Compliance Proposals

On May 3, 2000, the Clinton Administration announced a five-point plan to promote China's compliance with its WTO commitments:⁵⁶

- ! **Enforcement Efforts.** Establish a new Commerce Department Deputy Assistance Secretary for China devoted to monitoring and enforcing China's WTO trade agreements; establish a "rapid-response compliance" team of 12 staff working in the United States and China, and a China-specific subsidy enforcement team, to monitor China's trade compliance; and create a new website providing up-to-date information on China's WTO trade commitments and Chinese laws and regulations.
- ! **Technical Assistance to China.** Provide training and technical assistance to Chinese officials and lawmakers on issuing new laws and regulations to help China implement its WTO obligations.
- ! **Prompt Response to Market Access Problems.** Implement an accelerated investigation procedure of market access problems that would allow U.S. firms to file a complaint with the U.S. rapid response team on market access problems in China, which in turn would then contact the appropriate Chinese government agency to address the problem.
- ! **Trade Promotion.** Initiate a nation-wide campaign to educate U.S. companies on their legal rights and opportunities presented by China's WTO accession and expand government programs for promoting trade with China.
- ! **Monitor Trade Flows.** Monitor U.S. data on U.S. exports to China, and imports from China, to ensure that market access has

⁵⁵ Federal Document Clearing House, Transcript of Testimony by Secretary of Commerce William Daley before the Senate Commerce Committee, April 11, 2000.

⁵⁶ According to the Clinton Administration, this was part of a broader government initiative to improve U.S. monitoring of, and foreign compliance with, U.S. bilateral and multilateral trade agreements. The Administration requested \$22 million in additional funding in FY2001 for federal agencies (e.g., USTR, Department of Commerce, State Department, and Department of Agriculture) that monitor and seek enforcement of trade agreements.

been expanded as promised and to guard against import surges and dumping of Chinese products into the United States.⁵⁷

Trade Compliance Measures in H.R. 4444

On October 10, 2000, President Clinton signed into law H.R. 4444 (P.L. 106-268), a bill that would grant PNTR status to China upon its accession to the WTO. The Act (among other things) contains a number of provisions aimed at ensuring China's WTO compliance. First, it states that the United States should seek to obtain, within the protocol of accession of China to the WTO, an annual review of China's compliance with the terms of accession to the WTO. Second, it authorizes additional appropriations for the U.S. Departments of Commerce, State, and Agriculture and the USTR's office to help fund efforts to monitor China's WTO compliance. And third, it requires the USTR to issue annual reports on China's compliance with its WTO commitments (beginning one year after it accedes to the WTO).

Other Congressional Proposals

In addition to H.R. 4444, three other bills were introduced in the 106th Congress seeking to promote Chinese compliance with its WTO trade obligations. On February 29, 2000, Senator Max Baucus introduced S. 2115, a bill that would establish procedures for monitoring China's compliance with its WTO commitments, require the President to issue reports to Congress on China's compliance, and enable the House Committee on Ways and Means and the Senate Finance Committee to vote to require the USTR to initiate a Section 301 investigation against Chinese violations of its WTO commitments. On April 13, 2000, Representative Sam Gejdenson introduced H.R. 4306, a bill that would provide U.S. support for commercial and labor rule of law programs in China. On May 5, 2000, Senator John Ashcroft introduced S. 2548, a bill that would make the granting of U.S. PNTR status to China contingent to a U.S.-China agreement that would enable the United States (rather than the WTO) to determine the level of sanctions to be imposed against China in instances where the United States wins a WTO dispute resolution case against China but China fails to comply with the WTO's ruling to remove the trade barrier.

Concluding Observations on U.S.-China Trade Agreements and Implications For China's Accession to the WTO

It is difficult to make broad assessments of China's compliance or non-compliance with its bilateral trade agreements with the United States. U.S. government officials have stated on a number of occasions that China's compliance

⁵⁷ For an overview of U.S.-China dumping and import surge issues, see CRS Report RS20570, *Trade Remedies and the U.S.-China Bilateral WTO Accession Agreement*, by (name redacted), May 5, 2000.

with its trade agreements has been “mixed” or “somewhat mixed.”⁵⁸ USTR Charlene Barshefsky argues that China has generally implemented its trade agreements most satisfactorily when its obligations were “concrete, specific, and open to monitoring.”⁵⁹

The United States appears to have had initial success with its prison labor agreements with China. However, the Chinese government appears to have been less cooperative in recent years; it has not permitted U.S. site visits since 1997, despite repeated U.S. requests. China appears to have, for the most part, abided by the market access provisions of the 1997 textile agreement. However, to date, that agreement does not appear to have produced a significant increase in U.S. textile and apparel exports to China. China appears to have implemented a significant portion of the 1992 market access agreement.⁶⁰ However, it failed to remove all unscientifically-based standards on certain agricultural products. In addition, China sometimes removed one barrier only to replace it with another, and while transparency of trade laws was improved, it still remains a problem. Finally, in the case of IPR protection, China in 1992 agreed to enact new IPR laws. However, enforcement of those laws was weak, prompting the United States to threaten sanctions. China took new steps to strengthen IPR enforcement. However, such steps were deemed inadequate by the United States, which again in 1996 threatened sanctions. China responded with increased raids against illegal production facilities and smuggling of IPR-related products and made limited improvements in market access for foreign IPR-related industries. However, despite a vastly improved legal and enforcement IPR regime, U.S. officials state that IPR violations continue on a massive scale.

Obtaining full compliance with trade agreements appears to have been hampered by a variety of factors, including Chinese policies to promote and protect certain industries, lack of resources by Chinese government agencies to enforce trade rules and regulations, official government corruption, resistance from the provincial and local level (who often impose trade barriers against Chinese products from outside their localities as well), and mutual differences over what constitutes compliance.

The U.S. experience with China over its compliance with past trade agreements should be considered in the context of the U.S. experience with other countries. Problems with obtaining full compliance with trade agreements has not only been a problem for the United States in its trade relationship with China, but also with its dealings with several other trading partners as well. For example, the American Chamber of Commerce in Japan surveyed 63 trade agreements between the United

⁵⁸ For example, see USTR Mickey Kantor Statement to the U.S.-China Business Council, January 31, 1996, p. 3, and U.S. Deputy Treasury Secretary Stuart Eizenstat statement to the Nixon Center on April 19, 2000.

⁵⁹ The Federal Document Clearing House. Testimony of USTR Charlene Barshefsky before the Senate Finance Committee on the U.S.-China Bilateral Trade Agreement on China's Accession to the WTO, February 23, 2000.

⁶⁰ In April 1999, China agreed to remove SPS barriers on U.S. exports of meat, citrus, and Pacific Northwest wheat, although it has only recently implemented the agreement. See CRS Report RS20169, *Agriculture and China's accession to the World Trade Organization*, by (name redacted), Jan. 11, 2000.

States and Japan reached between 1980 and 1999. The Chamber determined that, based on such factors as content, implementation, and results, 53% of the agreements were “fully successful or mostly successful,” but 47% of the agreements were either “only partially successful, successful in one or two areas, or were unsuccessful.”⁶¹

The extent of China’s compliance with its WTO obligations could have a number of important implications. For China, full implementation of WTO reforms could cause difficult short-term adjustments for many Chinese industrial and agricultural sectors and could displace millions of workers. However, over the long run, such reforms will promote greater economic efficiency and hence more rapid economic growth. Thus, the biggest winner of China’s WTO reforms would likely be China itself. However, if the short-term effects of the Chinese economy are too severe, the Chinese government might seek to delay the implementation of its WTO agreements. Similarly, local government officials or central government ministries, hoping to protect industries under their jurisdiction or control, might attempt to circumvent China’s WTO commitments.

Many analysts are concerned that Chinese non-compliance with WTO trade rules and agreements could undermine the WTO as a multilateral institution and international support for free trade, especially if non-compliance was widespread and extensive, and could not be adequately dealt with in the WTO. For example, Chinese noncompliance could result in the WTO Dispute Resolution Body being swamped with multiple trade complaints brought against China, which could hamper the ability of the WTO to resolve trade disputes in a timely manner. Conversely, if WTO members failed to take aggressive action against Chinese non-compliance, it might undermine international support for the WTO (for failing to enforce trade rules) and for free trade in general (e.g., if China does not comply with WTO trade rules, why should other members do so?).

Some analysts have argued that a special mechanism should be established within the WTO to monitor China’s compliance with WTO rules in order to maintain pressure on the Chinese government to keep its commitments as well as to deal with compliance problems in their early stages, rather than bringing multiple trade dispute cases before the WTO for resolution. Other analysts have contended that, in addition to monitoring and enforcement efforts, the United States and other developed WTO countries should provide extensive technical assistance to China to help it bring its trade regime in line with WTO rules.

⁶¹ The American Chamber of Commerce in Japan. *Making Trade Talks Work.*, 2000, p. 17.

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