What China’s WTO Accession is All About

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Introduction

With the gavelling of the accession package at the conclusion of the Working Party meeting on 17 September 2001, the negotiation on China's accession to the WTO was finally brought to a close. Thereafter, the WTO Ministerial Conference approved the terms of China's accession in Doha (Qatar) on 10 November 2001 and the Chinese Government notified its acceptance on 11 November. In line with customary practice, and as set out in China's Protocol of Accession, China became a Member of the WTO 30 days later, on 11 December 2001.

Each accession to the WTO is a unique event, but few would argue with the proposition that China's accession has been more unique than others. After all, China was one of the 23 original contracting parties to the GATT in 1948 and her application for readmission to the multilateral trading system dates back 15 years to July 1986, easily making it the longest and most arduous accession negotiation in the history of the GATT/WTO.

After China's revolution in 1949 and the split between Mao Zedong and Chiang Kai-Shek, the government in Taiwan announced in 1950 that China would leave the GATT. Although the government in Beijing never recognized this withdrawal decision, nearly 40 years later, in 1986, the People's Republic of China notified the GATT of its wish to resume its status as a GATT contracting party and its willingness to renegotiate the terms of its membership.

A working party to examine China's status was established in March 1987 and met for the first time in October of that year. The GATT Working Party on China's Status met on over 20 occasions, but without conclusion. With the coming into being of the WTO in 1995, the GATT Working Party was converted into a WTO Working Party on the Accession of China. The WTO Working Party met 18 times.
Right from the beginning, the Working Party was chaired by Ambassador Pierre-Louis Girard of Switzerland.

Article XII of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), which governs accessions, is striking in its brevity. The operative provision reads: "Any State or separate customs territory … may accede to this Agreement, on terms to be agreed between it and the WTO". There are currently 28 accession working parties. Sixteen new Members have acceded since entry into force of the WTO Agreement. With China and Taiwan (known in the WTO as "Chinese Taipei") joining this winter, there are now 144 Members, including 3 separate customs territories (Chinese Taipei, Hong Kong, China and Macau, China).

The final stages of the China accession process can rather naturally be classified under three headings: (1) conclusion of bilateral market-access negotiations; (2) conclusion of multilateral negotiations in the Working Party, including the draft Protocol and its Annexes, as well as the Working Party Report, these documents together setting out the terms of China's accession to the WTO; and (3) approval and acceptance of these terms of accession by WTO Members and by China, respectively.

Before delving into a description of these three steps, it may be worth reviewing, briefly, the many ups and downs China experienced along its accession trail.

Here I am referring in particular to significant progress being made just prior to the Tiananmen "incident", almost two-and-a-half years following Tiananmen during which there was virtually no activity on the accession front, China's participation in the Uruguay Round negotiations but failure to conclude negotiations on its status as a GATT contracting party in time for it to be considered as an original Member of the WTO, conversion of the GATT working party into a WTO accession working party in December 1995, considerable optimism about an accelerated process in early 1997, the near-conclusion of a bilateral deal with United States in April 1999, the US bombing of the Chinese Embassy in Belgrade in May 1999, the conclusion of bilaterals with the United States in November 1999, followed by a spate of other
bilateral deals in the first half of 2000, including that with the European Union in May of that year. Further hiccups occurred thereafter, including the collision and downing of a US spy plane over the Taiwan Straits, the Bush administration's aggressive enthusiasm for a new form of Star Wars, the so-called Missile Defense System, and finally, the terror attack in the United States and the US-led retaliatory actions since then.

Clearly, China and WTO Members have been on a roller-coaster ride of major proportions over the past 15 years.

_Bilaterals_

Some 44 WTO Members (counting the 15 member States of the European Union as one) expressed interest in concluding bilateral market-access negotiations with China.

As these deals were struck and notified to the WTO, China's consolidated Schedule of Concessions and Commitments on Goods (China's "Goods Schedule") and its consolidated Schedule of Specific Commitments on Services (China's "Services Schedule") were prepared with assistance from the WTO Secretariat. Thereafter, they were reviewed in the Working Party and "multilateralized", i.e., extended on a "most-favoured-nation" ("MFN") basis to all WTO Members, as China's Goods and Services Schedules, annexed to the Protocol of Accession. In other words, these bilaterally agreed commitments have become part of the multilateral treaty terms of China's membership in the WTO.

China was only able to make rapid progress in concluding its bilateral negotiations with most other WTO Member governments once it reached bilateral agreement with the United States in November 1999 and then with the European Communities in May 2000. Thereafter the negotiations picked up pace.

But only in the final days of the Working Party was China able to conclude negotiations with Mexico, the last of the 44 WTO Members seeking bilateral market-access commitments. The sticking point there was that the two countries had to agree on how to deal with hundreds of
anti-dumping orders that Mexico continued to maintain against products of Chinese origin. In the end, Mexico agreed that it would terminate these allegedly WTO-inconsistent measures six years after China's accession.

In addition, El Salvador, which recognizes Taiwan and not the PRC (as is true of some other WTO Members as well), did not request bilateral negotiations with China and invoked the "non-application" provision of the WTO Agreement (Article XIII) against China.

One element contributing to pressure on China and Members to rapidly conclude bilateral accords was the US administration's agreement with China – as a quid pro quo for China's market-access concessions – that the United States would provide China with permanent MFN status, thus eliminating the annually renewed conditional MFN provided under the Jackson-Vanik Amendment to the US Trade Act. After much debate, the US Congress finally passed unconditional MFN (what it calls "permanent normal trade relations" or "PNTR") for China in September 2000.

**Multilateral Steps**

With the bilateral market-access negotiations nearing completion, Members and China showed renewed interest in wrapping up the many outstanding multilateral elements of the accession package. In order to finalize the negotiated package, and in recognition of the fact that much of the information China had submitted to the Working Party was incomplete or out of date, the Working Party requested China to submit updated information (notifications of laws, regulations and other policy measures) on all key aspects of China's trade regime.

Clearly, such information was indispensable to the Members’ assessment of the consistency of China's trade regime with WTO rules, as well as to finalizing negotiations on various key provisions of the Protocol and the Report. Identifying the trouble spots and agreeing on the timing – including possible transition periods – for China to bring any WTO-inconsistent policy measures into compliance with WTO obligations, presented major challenges for all concerned.
The final meeting of the Working Party this past autumn, with informal sessions in the week of 10 September and the formal meeting on 17 September, was devoted to completing the technical "clean-up" and verification of the Goods and Services Schedules, followed by an overall review of the documents to ensure consistency among the various elements of the accession package.

China and Working Party members finally reached agreement on all outstanding issues. By the conclusion, agreement was reached on preambular and general provisions; commitments relating to the administration of the trade regime, including uniform administration, special economic areas, transparency and judicial review; commitments on non-discrimination, special trade arrangements, state trading, non-tariff measures, tariff-rate quota administration, import and export licensing, price controls, taxes and charges levied on imports and exports, export subsidies and domestic support in agriculture, sanitary and phytosanitary measures; trading rights; and standards and technical regulations.

Agreement was also reached on a special transitional provision on price comparability in determining subsidies and dumping, lasting 15 years; the establishment of both a transitional product-specific safeguard mechanism and a separate transitional textile safeguard; immediate implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"); a host of technical, sectoral issues in trade in services; a transitional review mechanism to oversee compliance with the terms of the Protocol; and final provisions. … An impressive list.

While China has reserved the right to exclusive state trading for products such as cereals, tobacco, fuels and minerals, and to maintain some restrictions on transportation and distribution of goods inside China, many of the restrictions that foreign companies currently face in China will be phased out over a three-year transition period.
During a 12-year period, WTO Members will have access to a Transitional Safeguard Mechanism in cases where imports of products of Chinese origin cause or threaten to cause market disruption to the Member's domestic producers.

In the area of textiles, upon accession China became a party to the Agreement on Textiles and Clothing and, as for all WTO Members, quotas on textiles will end on 31 December 2004. But a special, negotiated, safeguard mechanism will remain in place until the end of 2008, permitting WTO Members to take action to curb imports in case of market disruption caused by Chinese exports of textile products.

Until very late in the game, there was lack of agreement on the availability to China of WTO provisions in favour of developing countries relating to domestic support in agriculture and industrial subsidies. The United States, in particular, objected to providing China with the full benefit of developing country provisions in these areas. The matter was eventually resolved through China agreeing not to resort to certain of these WTO provisions and accepting a cap on domestic support in agriculture at 8.5 per cent, below that available generally to developing country Members under the WTO Agreement.

It is doubtful, however, whether this cap of 8.5 per cent on domestic subsidies will have any truly detrimental impact on China's ability to help its farming sector adapt to the new and evolving conditions of competition, mainly because this 8.5 per cent figure is still well above existing budgetary outlays from the Chinese government.

Also going down to the wire, it proved exceptionally difficult to get agreement on the regime relating to trading rights. The basic regime eventually agreed to by China calls for a fully liberalized right for foreign companies to gain trading rights in China after a three-year transition period, except in respect of state traded products.

There was also considerable difficulty in reaching agreement on China's handling of its regime dealing with technical regulations and standards, the key issue here being how to ensure non-discrimination ("national treatment") in the application of this regime. After repeated
urging, spanning several years, China finally committed to unifying its administrative structure responsible for the inspection and conformity assessment procedures (under the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine ("AQSIQ")) for both domestic and imported goods, thus allaying many of the concerns raised in relation to the dual and separate systems of inspection that previously existed.

As part of the concluding phase, the Working Party also reviewed and obtained amendments and clarifications to many of the transitional Annexes of the Protocol. This was done on the basis of updated and revised drafts of these Annexes provided by China. They include Annexes on: Products subject to State-Trading; Products subject to Designated Trading; Non-Tariff Measures subject to Phased Elimination; Products and Services subject to Price Controls; Notification and Phase-Out of Subsidies; Export Taxes and Charges; Restrictions Maintained Against China; Issues to be Addressed in the Transitional Review; and the Schedule of Concessions and Commitments on Goods, as well as the Schedule of Specific Commitments on Services.

The Protocol and Working Party Report essentially contain a one-way set of commitments (from China's side only), although these documents also contain some "soft" commitments by Members, for example, regarding the non-abuse of domestic procedures in anti-dumping actions and restraint in the use of the special safeguard. Additionally, there is an unusual Annex to the Protocol, containing commitments by certain Members to phase out inconsistent measures maintained against China over a transition period (of up to five years).

Approval and Acceptance

Once consensus was achieved in the Working Party on the final accession package, this was forwarded to the General Council for decision. Given the timing of the Fourth Ministerial Conference in mid-November, it was decided that these documents should be forwarded to Doha for approval by Ministers, rather than being decided upon at the level of the General Council in Geneva.
In accordance with established procedures, the Ministerial Conference approved the Decision on Accession and the Protocol on the terms of China's accession on 10 November. And, as mentioned earlier, the acceding government became a Member of the WTO 30 days after it accepted its Protocol of Accession, which China did on 11 November, notifying the Director-General that the Standing Committee of the People's Congress had ratified the terms of accession. Thus, China became the 143rd Member of the WTO on 11 December 2001.2

Although Article XII:2 of the WTO Agreement provides that "the Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO", pursuant to Article IX:1 of the same agreement and a 1995 decision of the General Council, all accession decisions are to be approved by consensus (with possible recourse to voting only where consensus is not achievable). All 16 WTO accession decisions to date, including China's, have been taken by consensus.

*China's Accession in the Context of the WTO's Basic Principles*

It could be interesting to consider, briefly, how China's accession fits within the context of the five fundamental principles of the GATT and the WTO. Simply put, these principles cover: (1) non-discrimination; (2) market opening; (3) transparency and predictability; (4) undistorted trade; and (5) preferential treatment for developing countries.

There are two types of *non-discrimination* of interest: the MFN principle; and the national treatment principle. Under the MFN principle, a Member may not discriminate between its trading partners: goods and services and service providers are to be accorded MFN, i.e. equal, treatment. At the same time, a Member must provide national treatment: it may not discriminate on its internal market between its own and foreign products, services and nationals.

Where do things stand in terms of China's accession vis-à-vis the principle of non-discrimination? China, like all other Members, has committed to abide by all the WTO

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2 Chinese Taipei, whose terms of accession were approved by Ministers on 11 November 2001, became a
agreements, including those provisions requiring application of MFN and national treatment. In its Protocol of Accession, China has agreed to undertake additional commitments in order to ensure the smooth phasing in of these non-discrimination principles. Of particular note are commitments to eliminate dual pricing practices and to phase out within three years most of the restrictions on importing, exporting and trading currently faced by foreign enterprises. All foreign enterprises, including those not invested or registered in China, are to be accorded treatment no less favourable than that accorded to enterprises in China.

The principle of market opening is promoted in the WTO through successive rounds of multilateral trade negotiations aimed at the progressive lowering of trade barriers. New Members are also pressed to liberalize their trade regimes during accession negotiations. Trade ministers kicked off the latest round of multilateral negotiations at the Doha Ministerial Meeting last November.

With respect to market opening, China has very significantly reduced its tariff and non-tariff barriers as part of its bid to join the WTO. The breadth and depth of the cuts are there for all to see. China's willingness to progressively and substantially open up its services sectors to foreign competition is also undeniable. As for the Doha Development Agenda, China has already demonstrated its intention to play a significant role in this new round of trade negotiations.

Transparency and predictability are key elements of the multilateral trading system. The basic transparency principle, contained in GATT Article X, calls on Member governments to promptly publish all trade-related laws, regulations, judicial decisions and administrative rulings of general application, to administer all such measures in a uniform, impartial and reasonable manner, and to provide for independent judicial review procedures for the prompt review and correction of administrative actions. The predictability principle is ensured through a legal hierarchy giving preference to tariffs over less transparent and less secure non-tariff measures such as quotas and licences, and by encouraging Members to "bind" their market opening

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WTO Member on 1 January 2002.
commitments in goods and services. In the goods area, this binding amounts to setting ceilings on customs tariff rates.

China has committed to abide by the WTO's transparency obligations across the board, including with respect to uniform application of its trade regime and independent judicial review, and has made additional commitments in each of these areas. While difficulties may exist with respect to variations in treatment in different parts of China's customs territory, as well as with the perceived lack of independence of the judiciary, there can be little doubt that the Chinese government is committed to carrying through the necessary reforms to implement these obligations in a uniform and impartial manner. Also, as noted, China's accession commitments will be the subject of a special Transitional Review Mechanism for the first 10 years of membership.

With China as a member, her producers and exporters will more confidently be able to make long-term business decisions on the expansion of their activities. The more open the Chinese economy becomes, the more China will benefit from the legal security of the rules-based trading system. Not just foreign investors, exporters and importers, but also all Chinese citizens, will benefit from the more open, non-discriminatory reforms China is currently undertaking.

In terms of producing a more predictable and secure trading environment, China, in the goods area, has bound all its import tariffs. China has also committed to the phased reduction and removal of tariff barriers, mostly by 2004, but in no case later than 2010. China's average bound tariff level will decrease to 15 per cent for agricultural products, ranging from 0 to 65 per cent, with the higher rates applied to cereals. For industrial goods, the average bound tariff level will go down to 8.9 per cent, with a range from 0 to 47 per cent, the highest rates applied to photographic film and automobiles and related products. In services, China has made a more comprehensive set of initial commitments than those offered by most developed countries during the Uruguay Round. Of particular note are China's commitments in services sectors covering telecommunications, banking and insurance.
The WTO system also promotes *undistorted trade* through the establishment of disciplines on subsidies and dumping, allowing Members to respond to unfair trade through the imposition of countervailing or anti-dumping duties. In addition, the treaty allows individual Members to impose temporary safeguard measures, under strict rules, when faced with a sudden surge in imports causing serious injury to a domestic industry.

As in other areas, China has undertaken to abide by all WTO disciplines relating to subsidies and countervailing measures, anti-dumping and safeguards. As noted above, it has also committed not to use export subsidies on either industrial or agricultural goods, and has accepted special provisions sought by other Members in relation to determinations of dumping or subsidies, as well as a special product-specific safeguard mechanism and a separate textile safeguard. China has also indicated its intention to join the plurilateral Agreement on Government Procurement which is aimed at ensuring fair competition rules in purchases by government procurement agencies.

The principle of *preferential treatment for developing countries* permeates the entire WTO Agreement, providing transition periods to developing countries and countries in transition to market economies, to adjust their systems to many of the new obligations resulting from the Uruguay Round. A Ministerial Decision gives additional flexibility to the least-developed countries in implementing the various Uruguay Round agreements, and calls on developed country Members to accelerate their implementation of market access commitments on goods exported by the least-developed countries.

Although China has not been granted across-the-board preferential treatment as a developing country, it has negotiated specific transitional arrangements in certain areas of its trade regime. Examples include the phasing out of quotas and import licences, and the phased liberalization of the right for foreign entities to trade in China. In contrast, despite the availability of more preferential treatment under the WTO agreements, China has accepted a special cap on its ability to provide domestic production subsidies in agriculture and has agreed not to use export subsidies. It has also committed to immediate implementation of the TRIPS Agreement.
Institutional Implications

Turning to some of the institutional implications of China's WTO membership, no one can contest that China's participation in the WTO will affect the operations of this organization in substantial ways and over the long term. China is joining as the seventh largest exporter and eighth largest importer of merchandise trade, and as the twelfth leading exporter and tenth leading importer of commercial services. She has the largest population and largest potential market of any WTO Member.

Undoubtedly, China's membership will have implications for the regular work of the WTO's many committees administering the many agreements of this institution. China will surely be active in the newly launched and future rounds of multilateral trade negotiations, in agriculture, in services but also in other areas of mutual concern. It will participate, too, in fashioning the improved institutional operations of the WTO. Clearly, also, China's membership is likely to result in expanded recourse to the dispute settlement procedures of the WTO, both by China and by other Members in relation to China's implementation of its WTO commitments. The first such case was that recently brought by China, similar to that brought by many other WTO Members, against the US steel safeguard measures. And we should of course expect to see some new faces in the Secretariat.

Concluding Remarks

Since the mid-1980s, the process of reform in China has matured considerably, and China's trade performance has reflected this. China has become a very important player in international trade, on both the import and the export side. Moving from an earlier phase of import planning to one of import licensing and then, more significantly, to one of import tariffs, has brought prices and the market mechanism into play as the key determinants of China's future trade relations with the rest of the world.
Accession should allow China to lock-in the accumulated benefits of the trade reform process that the Chinese government has undertaken to date, and provide a platform from which China can sustain its reform process into the future.

By placing China's reforms within the broader context of trade liberalization by all WTO Members, Chinese producers and exporters can increase the returns from trade reform in China through reciprocal market access abroad, and help the Chinese government resist pressure domestically to reverse the process of reform.

For China, WTO accession will provide the 1.3 billion Chinese people with secure, predictable and non-discriminatory access to the markets of 143 trading partners. It will also give this same enormous population secure and non-discriminatory access to the goods and services of these other WTO Members.

But, from China's perspective, membership will also for the first time commit this new WTO player, at the international level, to implement legal and domestic policy reform, ensuring much greater transparency and security on a uniform basis. China has made incredible strides at reform over the past 20 years. However, committing itself to abide by international treaty rules and the rule of law in the conduct of trade and in domestic policy reform is likely to take this process forward at an even more impressive pace.

Accession will also mean that China can replace the many risky and uncertain bilateral relationships it has had to use until now, to shape its trade with its major trading partners, by a single, multilateral trade relationship with the rest of the world.

In the last few months, there was little doubt that WTO Members and China were very eager to see the negotiation brought to a rapid and successful conclusion. This desire to achieve closure on China's accession was also shared by the Secretary of the Working Party.

Of course, what lies beyond China's accession is the major and, in many ways, imponderable task of implementation by China of its WTO accession commitments. As China
approaches this task, the question uppermost in the minds of many Chinese and foreigners alike, is whether and how China will be able to ensure uniform and impartial implementation of her trade commitments.

At this stage, it is difficult to predict the speed with which WTO Members and China will resort to the WTO's dispute settlement procedures. There is little doubt, however, that China and its trading partners will eventually take full advantage of WTO dispute resolution to resolve trade disputes between them. While considerable emphasis may initially be placed on the 10-year Transitional Review Mechanism provided in China's Protocol, it must be said that this mechanism does not contain any enforcement provisions.

It is hard to overstate the difficulties many sectors of Chinese society will face in the months and years following accession. The impact on loss-making state industries, less developed agricultural communities, and myriad government financed projects across the country will be dramatic.

Moreover, so-called "adjustment" to new, more competitive market conditions, will, for many millions of individuals and families, mean unemployment and significant "displacement". There can be no doubt that it will take many years for large segments of China to establish a new equilibrium, during which time many citizens may well face considerable hardship.

But we should bear in mind that this adjustment process has already begun, and not just yesterday. The Chinese people are hardly strangers to this process. Already in the early 1990s China introduced a bankruptcy law and other legislation making state industries in principle responsible for their own profits and losses. And over at least a decade now, China has radically reduced state subsidies and encouraged development of private enterprise in many sectors.

Since the mid-1990s in particular, and as a member of the IMF, China has rationalized and liberalized handling of its foreign exchange market. In addition, China has progressively, yet dramatically, reduced its import tariffs and other non-tariff restrictions on foreign participation in the Chinese market.
The difficult adjustment continues and is far from complete. At this stage, therefore, we can do little more than wish China and its people "bon courage" as they venture down the extremely challenging and tortuous path that stretches before them.

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