

# **Institutional Implications of WTO Accession for China**

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## I. INTRODUCTION: WTO MEMBERSHIP, "SYSTEMS FRICTION," AND INSTITUTIONAL STRENGTH

For fifty years, the General Agreement on Tariffs and Trade (GATT) system has fostered the development of liberal multilateralism. Originally a short, fifty page set of rules that governed trade between just 23 "original" Contracting Parties, and applying only provisionally because of the failure of several countries to ratify it, the GATT has evolved into one of the world's most well-developed international organizations. The World Trade Organization (WTO) boasts over 120 member states (Members) that have ratified its founding charter and thousands of pages of substantive rules. Perhaps most significantly, the Uruguay Round negotiations bestowed upon the GATT system revised rules of government, which many expect will vastly improve the system's institutional strength.<sup>1</sup> With new dispute settlement rules, clarified rules of procedure for decision-making by the Members, and the formal establishment of a genuine secretariat,<sup>2</sup> many claim that the world's preeminent trade institution is stronger than ever. Their hope is that this revitalized institution can govern itself effectively, advancing international political order and rules-based liberal multilateralism.

This paper considers the possible effects of China's accession to the WTO on the WTO's institutional strength-- how China's accession could affect WTO governmental processes and the extent of political support for the organization from leading Western trading countries. During the past ten years, in which China has (of course) not been a GATT Contracting Party or a WTO Member, there has been substantial "systems friction" between China and some Western trading countries. The term "systems friction," coined by Sylvia Ostry<sup>3</sup> (but a notion attributable more accurately to Thucydides<sup>4</sup> and then Machiavelli<sup>5</sup>), is usually thought of as the political tension between countries attributable to their economic interaction in the context of fundamental differences in the organization and operating principles of their respective political-economic

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<sup>1</sup> During the Uruguay Round, Professor Jackson advocated establishment of a World Trade Organization and many of the other organizational reforms that were eventually adopted on the grounds that it would strengthen the multilateral trading system institutionally. See John H. Jackson, Restructuring the GATT System (Royal Institute of International Affairs: London, 1990).

<sup>2</sup> Previously, the GATT "secretariat" lacked such a status and existed technically as the staff of the Executive-Secretary of the Interim Commission for the International Trade Organization.

<sup>3</sup> See Miles Kahler, Regional Futures and Transatlantic Economic Relations (New York: Council of Foreign Relations Press, 1996) at 43.

<sup>4</sup> See Thucydides, The Peloponnesian War (The Crawley Translation) (New York: The Modern Library, 1982), esp. Book I.

<sup>5</sup> See Niccolo Machiavelli, The Discourses (New York: The Modern Library, 1950), Chapter LIX.

structures. The existence of systems friction now associated with China-trade raises the question of whether WTO accession for China is more likely to reduce and contain the systems friction or weaken the WTO as an institution.

The analysis below suggests that the political friction associated with accession of a large, transitional economy like China's, combined with the WTO's current substantive and procedural rules, may weaken the WTO as an international governmental system-- unless some preventative action is taken. Chinese accession will expand the territorial scope of the WTO and the level of trade that it governs. It may also help "lock in" the impressive steps China has taken towards economic liberalization over the last two decades. But it will also expand the WTO's coverage to include a political-economic system that operates in ways that the WTO's substantive and procedural rules were not designed to govern. This is likely to add to a perception by some powerful trading nations that on crucial issues the WTO suffers from decision-making gridlock, administrative inefficiency, and an ineffective dispute settlement system. This is not to suggest that Chinese accession will fatally (or even substantially) weaken the WTO, but it is likely to marginally weaken its effectiveness as an international governmental system unless corrective action can be taken.

Part II of this paper provides a theoretical prologue that helps frame the analysis. Comparative political theory and international relations theory provide tools for understanding whether the rules of a particular institution are well-suited to effective government of its constituent social units. These theories suggest considering the extent to which an institution's substantive and procedural rules are capable of resolving political conflict between social units governed by the institution in a way that is acceptable politically to the most powerful units.

Part III analyzes the extent to which WTO substantive rules may not be designed to fully intermediate trade and political friction between Western liberal, democratic political economies and China's political-economic system. China is fundamentally different from other WTO members, partly because of its size (which, as suggested by Steve Cohen, does matter),<sup>6</sup> but also because of its particular political-economic structure: a continuing large role for state enterprises; a lack of transparency of some domestic rules and rule-making processes; a lack of meaningful competition policy rules; a judicial system which, on commercial matters, is in the early stages

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<sup>6</sup> Steve Cohen, "Form, Scale and Limits In China's Trade and Development," Journal of East Asian Economics 8(4), (Greenwich: AI Press Inc., forthcoming).

of development and is not always perceived as independent of politics; considerable corruption in some regions; relatively weak central government authority; weak regulatory systems pertaining to the environment and (ironically) worker rights; and an absence of democratic guarantees. These are differences that are not accounted for by WTO rules. And if the political friction associated with these differences can not be addressed in another manner-- through WTO constitutional procedures or China's Protocol of Accession-- then China's accession is likely to weaken the WTO institutionally.

Part IV of this paper examines relevant WTO constitutional procedures, showing that the WTO's judicial, legislative, and administrative processes are unlikely to yield substantive rules or other solutions that could resolve the tensions likely to arise from China's accession. It is suggested that a broad reading of the Article XXIII doctrine of "non-violation nullification or impairment" would help provide a constitutional solution, but an adequately clear definition of that doctrine is unlikely in the immediate future.

Part V concludes by suggesting that Chinese accession to the WTO is likely to generate substantial dissatisfaction by some powerful trading countries with WTO dispute settlement results, and a perception of WTO decision-making gridlock and administrative inefficiency in the secretariat- all of which will undermine support for the WTO. The associated weakening of the WTO as an institution may be minimized or remedied to the extent that China's Protocol of Accession addresses the substantive shortcomings of WTO rules identified above, the doctrine of non-violation nullification or impairment is interpreted broadly, and China continues to develop along capitalist-democratic lines.

## **II. THE RELATIONSHIP BETWEEN INSTITUTIONAL RULES, SOCIAL UNITS, AND INSTITUTIONAL STRENGTH: A THEORETICAL PROLOGUE**

Whether a particular set of institutional rules will foster effective government depends not only on the rules themselves, but also on the constituent units of the system. Political scientists and historical sociologists have long studied this relationship in the domestic political context.<sup>7</sup> Whether government is effective depends at least in part on whether procedural and

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<sup>7</sup> See, for example, Samuel B. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968); G. Bingham Powell, *Contemporary Democracies: Participation, Stability and Violence* (Cambridge: Harvard University Press, 1982); and Seymour Martin Lipset, *The First New Nation* (New York: W.W. Norton, 1979).

substantive rules fit those participating in the system. If rules and institutions fail to develop along with underlying social or political change, then government suffers, the institutions of government are weakened, and political decay may set in.

At the international level, realist regime theory suggests analogous relationships. These theories suggest that the underlying distribution of power and interests among states will determine regime rules that will in turn yield international behavior desired by politically powerful countries.<sup>8</sup> This resembles Marxist arguments that international structures perform functions demanded by capital,<sup>9</sup> except that (*inter alia*) realists do not necessarily embrace an underlying economic dynamic, particularly not a Marxist dynamic. A corollary of realist regime theory must be that if a regime's rules do not yield outcomes favored by powerful states, then those powerful states are likely to withdraw support for that regime: an international institution's substantive rules and constitutional procedures must together create outcomes supported by nation-states with power.

Thus, history is littered with the remains of international institutions that were weakened or collapsed because their rules were not well-matched with underlying power and interests. The League of Nations and the International Trade Organization are but two examples of international institutions that were still-born because of such rules. And the United Nations General Assembly and the World Intellectual Property Organization may be present-day examples of institutions that have been weakened in their international role because of procedural rules that do not reflect underlying power and interests.

This framework begs the question of whether China's accession to the WTO will strengthen or weaken the institution and its government, given the WTO's existing substantive and procedural rules.

### **III. WTO'S SUBSTANTIVE RULES AND THE CHINESE TYPE OF MARKET ECONOMY: "SYSTEMS FRICTION" WITHIN THE INSTITUTION**

As suggested above, there is currently considerable systems friction between China and Western capitalist economies. The nature of that systems friction may be seen through alternative lenses. Neoclassical economics uses a deductive-axiomatic model to show that free trade

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<sup>8</sup> See Steven D. Krasner, Editor, International Regimes (Ithaca: Cornell University Press, 1983).

<sup>9</sup> See Jürgen Habermas, Legitimation Crisis (Boston: Beacon Press, 1975).

between two liberal economies will yield optimally efficient outcomes;<sup>10</sup> the conclusions are shattered, however, if the assumption of liberal constituent economies is suspended. From a strategic trade theory perspective,<sup>11</sup> trade relations between a *laissez-faire* system and an economy with strong doses of state intervention are also likely to yield an unsatisfactory outcome, at least from the vantage of policy-makers in the liberal system. Hence, whether embracing optimal efficiency or national economic welfare as a goal, it is not difficult to understand why some in the West are not completely satisfied with Chinese trade relations.

In a particular institutional context, the analysis of systems friction should be somewhat different. Here the question becomes the extent to which the rules of an international institution adequately account for and permit a process of intermediation to take place between different political-economic systems. If the rules perform this function well, then it is likely that the systems friction will not be played out within the institution. However, if the rules do not perform this function well, then the institution is likely to suffer from the effects of systems friction, experiencing governmental problems and diminished political support from those countries perceiving inadequate rules.

Unfortunately, many dimensions of China's political-economic system are not accounted for by current WTO rules. This is not surprising since those who drafted the GATT and participated in the Uruguay Round negotiations did not give much, if any, consideration to how the organization might intermediate relations between Western systems and the Chinese type of market economy. WTO rules do not fully address at least eight factors that could become a source of systems friction within the WTO.

First, even according to the most generous estimates of the extent to which China's market has liberalized, at least 35% of Chinese gross domestic product is still produced by state-owned enterprises. Action by state-owned enterprises has the potential to undermine the four fundamental rules of the WTO system. For the most part, the GATT assumes that economic decision-making is made by atomistic producers and consumers based on price, but state-owned

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<sup>10</sup> See David Ricardo, "On the Principles of Political Economy and Taxation," in *Works and Correspondence*, ed., Piero Straffa, (Cambridge: Cambridge University Press, 1951), 133-49; and Charles P. Kindleberger and Peter Lindert, *International Economics*, 6th ed. (Homewood, Ill.: R.D. Irwin, 1978).

<sup>11</sup> For a description of strategic trade theory, see Paul Krugman, *Rethinking International Trade* (Cambridge: MIT Press, 1990).

enterprises do not always make decisions based on price.<sup>12</sup> For example, it is not difficult to see state-owned enterprises that consume computer chips (or steel) deciding to purchase all of their computer chips (or steel) from state-owned chip (steel) manufacturers. This would effectively undermine the GATT's Article III national treatment provision. Similar arguments can be made about how state-owned enterprises may engage in behavior that would undermine the GATT Article I commitment of most favored nation (MFN) treatment, the Article II commitment to a schedule of concessions, and the Article XI commitment against maintaining quantitative restrictions.<sup>13</sup>

GATT Article XVII was intended to discipline activity by state enterprises<sup>14</sup> but the draftsman could never have anticipated that this article would sufficiently address problems created by the accession of a country as big as China's and with such a big role for state enterprises. The primary requirement of Article XVII is that state enterprises shall make purchases or sales "solely in accordance with commercial considerations." But this discipline cannot be effective in cases (like those that are sure to be encountered in China) where the reason for purchases or sales by state enterprises is not transparent.

Second, more broadly, the WTO system assumes that members' laws, regulations, and administrative and legislative processes are transparent. This is crucial to the effectiveness of many of the GATT's main principles. For example, true national treatment (Article I) requires that both domestic and foreign producers know the rules of the game. Similarly, a lack of transparency about rules or regulations affecting imports could have the same effect as a quantitative restriction (Article XI). The formulation of rules also demands a transparent process so that foreign interests can be represented to ensure that the rule is not discriminatory in its effect. And, as suggested in the preceding paragraph, any meaningful discipline on state enterprises entails transparency.

GATT Article X requires the publication of trade regulations prior to their application, but this discipline is not broad enough to cover all of the kinds of transparencies encountered in China. For example, the WTO has no meaningful requirement of procedural transparency

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<sup>12</sup> On this point, generally, see Donald C. Clarke, "GATT Membership for China?", 17(3) University of Puget Sound Law Review 517 (Spring 1993).

<sup>13</sup> For this kind of analysis applied to state-trading enterprises, see John A. Jackson, The World Trading System (Cambridge: MIT Press, 1989).

<sup>14</sup> The title of Article XXVII is, "State Trading Enterprises," but the text makes clear that the article applies to all state-owned enterprises, not just state trading enterprises. See John A. Jackson, World Trade and the Law of GATT (Michie Press, 1969).

(except, perhaps, in the context of formation of technical, sanitary, and phytosanitary regulations). More problematic, the existence of transparency is difficult to monitor since, by definition, governments do not broadcast non-transparent directives or "administrative guidance." In short, it is often very difficult to know at any given moment whether a pattern of behavior may be explained by an Article X violation.

Third, China lacks any meaningful competition policy and the WTO system does not require a member to have a competition policy. While there are few complaints at this time about anti-competitive activities in the private sector in China, it does not take great imagination to see that such problems could arise in the future. For example, to the extent that China continues to reduce the role of state-owned enterprises, government authorities could decide to give a legal monopoly to certain currently state-owned enterprises, particularly in the early phases of privatization. This is a pattern that has been followed in some other Asian countries and in Eastern Europe. Monopolistic or monopsonistic behavior in the private sector is the analogue to discriminatory behavior by state-owned enterprises and can eviscerate the effectiveness and meaningfulness of basic GATT rules just as effectively.

Fourth, the WTO system implicitly expects that members will have an effective and impartial judicial system, which is crucial to the effectiveness of many WTO obligations. For example, it is difficult to see how a country with a judicial system that is slow, corrupt, or not independent of domestic political influence could offer reliable and impartial enforcement of its laws. Yet reliable and impartial contract enforcement may be the *sine qua non* of equitable trade and investment relationships. A weak judicial system may be less troubling in issue areas where WTO rules require enforcement of particular topics in domestic law (e.g., intellectual property), but even in that context it is unclear whether a WTO dispute settlement panel would be willing to condemn an entire legal system as ineffective or lacking impartiality. China's legal system is developing quickly, but most observers continue to question its impartiality in cases involving foreigners.

Fifth, the existence of wide-spread corruption (e.g., bribery, kickbacks, etc.) can also undermine WTO rules if nationals from some countries are permitted to engage in corrupt activities while those from other countries are prohibited from doing so. United States nationals are prevented from engaging in specified corrupt activities under the Foreign Corrupt Practices Act, whereas nationals from many European countries are not so constrained. The absence of



WTO disciplines on corrupt practices, combined with U.S. restrictions on such activities by U.S. nationals, can yield patterns of purchasing, investment, procurement, and regulatory administration (including customs) in countries with widespread corruption that are inefficient and undermine crucial GATT rules such as MFN treatment and national treatment. Many U.S. businessmen have alleged precisely such patterns in parts of China, particularly in the southeast.

Sixth, the relative weakness of a central government with respect to sub-federal entities (such as provinces, states, and local government) is likely to reduce the effectiveness and meaningfulness of WTO undertakings. The Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 reiterates the obligation of Article XXIV:12 that each member "shall take such reasonable measures as may be available to it to ensure" observance of the provisions of WTO agreements by regional and local governments and authorities within its territories. However, the failure to define "such reasonable measures as may be available to it", and the impracticability of some central governments doing so, suggests that WTO obligations will be less effective in national systems that are de-centralized in practice than in highly centralized countries. The extent to which sub-central government authorities refuse to obey central government rules in China, and the apparent impotence of the central government to change that behavior, is notorious.

Seventh, the WTO lacks rules to ensure minimal standards of environmental and social regulation in member states. This raises the possibility that big differences in the stringency of regulatory regimes across WTO Members may attract investment and jobs away from countries that have relatively stringent standards and towards countries, like China, that have relatively lax environmental or workers rights standards.<sup>15</sup>

Eighth, WTO rules do not provide an exception from general WTO obligations for trade actions taken in response gross human rights violations. Article XX:(e), which permits trade restrictions relating to the products of prison labor, is about as far as GATT goes. Yet many in the United States believe that there should be some linkage between U.S.-China trade relations and Chinese progress on human rights and democratization, more generally.<sup>16</sup>

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<sup>15</sup> See C. Leigh Anderson, Richard R.W. Brooks, and Robert A. Kagan, "Adversarial Legalism, Transaction Costs, and the Industrial Flight Hypothesis," BRIE Working Paper No. 93 (Berkeley: Berkeley Roundtable on the International Economy, forthcoming).

<sup>16</sup> See, as evidence of demand for this linkage, Title IV of the Trade Act of 1974, as amended (the "Jackson-Vanik Amendment").

In summary, WTO rules are weak or missing on several issues that are likely to be sources of systems friction between the United States and China. Weak or missing rules in these areas may be understood as a relic of the WTO's history: the institution was never expected to intermediate trade relations between Western *laissez-faire* democracies and a political economic system like that of China's, which appears to be transitioning from a centrally planned, communist system to something as of yet not fully defined. Thus, the WTO's substantive rules are not equipped to address the systems friction that would likely accompany Chinese accession.

#### **IV. WTO CONSTITUTIONAL PROCESSES AS SOLUTIONS TO SYSTEMS FRICTION WITH CHINA?**

Even if existing substantive rules do not address sources of systems friction, it is possible that operation of the WTO's constitutional processes could provide a solution. More broadly, in assessing how well an institution is likely to absorb a new social unit, it is important to analyze how that institution's governmental processes will function after the new social unit joins it. The analysis that follows suggests that the WTO's judicial, legislative, and administrative systems will have difficulty resolving the systems friction associated with China's entry into the world trading system. Combined with the WTO's substantive shortcomings, this may have the tendency to create a perception in some Western countries that the WTO is a weak and inadequate institution, providing fodder for those in the United States who would like to see more "unilateral" action, and weakening support for the WTO by at least one major trading power.

##### **The Judicial Process: WTO Dispute Settlement**

WTO dispute settlement is unlikely to render decisions that resolve the systems friction associated with China's entry into the world trading system. In cases where a complainant can show that China has violated WTO rules, the WTO dispute settlement system is likely to render decisions that require China to change its behavior and comply; moreover, if compliance is not forthcoming, the Uruguay Round Understanding on Dispute Settlement ensures an automatic right to retaliation by the injured WTO Member. But the problem is not with potential violations of WTO obligations by China: it is the weakness or absence of WTO rules in key areas that is likely to yield dissatisfaction with WTO dispute settlement by some countries. WTO dispute

settlement is unlikely to provide a remedy for behavior by China that does not violate a WTO rule. And the preceding section of this paper identified several sources of systems friction that are not adequately addressed by WTO rules.

GATT Article XXIII:1(b) provides a basis for the possibility of a successful claim by a complainant based on a theory that another member has imposed a measure that nullifies or impairs a benefit, whether or not that measure conflicts with WTO obligations. Claims based on this "non-violation nullification or impairment" theory were relatively rare in GATT jurisprudence. Moreover, many commentators and GATT panel reports have suggested a relatively narrow reading of this doctrine. For example, at least one panel has stated that the doctrine is intended to protect the balance of tariff concessions, a principle that can be used to argue that the complainant must have negotiated a tariff concession with the respondent on the product that is the subject of the claim.<sup>17</sup> Similarly, some have read the text of Article XXIII:1(b) literally to suggest that the doctrine supports a claim only if it is based on the "application" by another member of a measure, not if the claim is based on the failure to apply a measure (i.e., a failure to enforce competition policy rules could not be the basis of a non-violation nullification or impairment claim). And even more limiting is the suggestion that the doctrine could be invoked successfully only upon a showing that the complainant had no reasonable expectation of the measure complained of at the time that it negotiated the associated tariff concessions.<sup>18</sup>

At this time, it is unclear how narrowly or broadly the non-violation nullification and impairment doctrine will be construed by WTO dispute settlement panels and the Appellate Body. A panel decision is expected soon in the U.S.-Japan film dispute, and that decision is expected to address the issue; however, an appeal is almost certain and it is unlikely that the parameters of the doctrine will be fully fleshed out in the near term. A broad reading of the doctrine would provide an important (though incomplete) lubricant for systems friction associated with behavior that is not addressed by WTO rules. Such a reading would not require the losing party to change its behavior, but would authorize "compensation" for the complainant. In contrast, a narrow reading of the doctrine would render the dispute settlement system incapable of resolving the political tension associated with behavior that is not covered by WTO rules.

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<sup>17</sup> 1990 Panel Report on "EEC-Payments and Subsidies Paid to Processors and Producers of Oil Seeds and Related Animal-Feed Proteins." L/6627, adopted on 25 January 1990, 37S/86, 126-127, ¶ 144.

<sup>18</sup> For a discussion of the basis for this argument, see John H. Jackson, World Trade and the Law of GATT at 179.

Moreover, since the WTO dispute settlement process permits relatively swift and automatic action against a country that acts unilaterally (i.e., retaliates without WTO authorization), a narrow reading of the doctrine would leave the United States with the uncomfortable choice of either simply bearing the brunt of systems friction or taking unilateral action that contravenes its WTO obligations and would weaken the institution.

### **The Legislative Process: WTO Consensus Decision-making**

While there are specific voting procedures and proportions required to amend the GATT 1994, to grant waivers, to approve accessions, or take certain other actions, the vast proportion of WTO actions are taken according to the practice of consensus. The WTO body concerned is deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.<sup>19</sup> The consensus decision-making practice means, therefore, that very little legislative action can be taken in the WTO if China (or any other country) objects to it.

This decision-making practice is likely to render the WTO legislative process incapable of adopting new rules that would address sources of systems friction identified in the preceding section. China is likely to block a consensus on any rule that would discipline Chinese practices that contribute to systems friction and that are not already disciplined.

In assessing the WTO's constitutional capacity to address systems friction, it is important to consider the relationship between the operation of its judicial and legislative processes. In particular, a broad reading of the nonviolation nullification and impairment doctrine, which would result in authorized "compensation" for Western countries facing injury from Chinese practices (regardless of whether the Chinese practices are permitted under WTO rules) would likely facilitate legislative solutions to systems friction-- even under the consensus rule. The availability of compensation would provide bargaining leverage for those Members seeking a rules-based solution. In at least some situations, it is likely that China and other Members would reach agreement on a rules-based approach to some practices that have led to a non-violation nullification or impairment finding.

But in the absence of a broadly construed non-violation nullification or impairment doctrine, it is hard to see anything other than legislative gridlock on proposals for meaningful

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<sup>19</sup> Article IX, Agreement Establishing the World Trade Organization, fn. 1.

new rules relating to state-owned enterprises, transparency, domestic judicial systems, and other topics that are likely to be sources of systems friction with China.

### **The Administrative Process: The WTO Secretariat**

WTO accession is not likely to render the WTO Secretariat more efficient or effective. The WTO Secretariat, like its GATT precursor, has not been considered to be very bold or effective. That is understandable because the Secretariat serves at the pleasure of the Members and cannot afford to take any action, depict any matter, or frame any issue in a manner that a powerful Member or coalition of Members would perceive as contrary to their interests. In so far as China would bring a host of new interests and practices into WTO debates, its accession would marginally water down further the WTO Secretariat's courage and effectiveness. And if China were to insist upon the application of U.N. staffing rules in the WTO, then this effect would likely be magnified.

## **V. CONCLUSIONS: CATCHING THE TIGER BY THE TAIL VERSUS CONTAINING IT -- ALTERNATIVE PATHS FOR THE WTO**

Without solutions to the problems suggested in the foregoing analysis, the systems friction now being experienced with regard to China trade might be exacerbated by Chinese accession to the WTO. Ultimately, "systems friction" is a political concept: it is certain to operate even under circumstances that neoclassical economists might find acceptable. Since China is not currently a WTO member, anarchy<sup>20</sup> reigns in trade relations between China and the countries of the West: China and Western countries negotiate their trading relationships in a state of nature. This permits some Western countries to threaten retaliation or otherwise demand change in Chinese behavior, regardless of WTO rules. As a political device, this works: Chinese behavior changes marginally and Western government officials gain domestic political cover for maintaining a largely open trade and investment relationship with China.

In the worst case, this changes with China's accession to the WTO. The substantive rules and governmental processes of the WTO are intended to end anarchy and constrain unilateral behavior, but, in the case of accession for China, WTO rules may attempt to do so without

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<sup>20</sup> "Anarchy" in the sense that power and authority is decentralized, held only by the constituent units of the system--the states. See generally, Ken Waltz, Theory of International Politics (Menlo Park: Addison-Wesley, 1979).

providing adequate procedural or substantive lubricants for systems friction. This creates a risk that the WTO's governmental processes will become deadlocked and incapable of resolving China's trade tensions with some powerful trading countries, undermining the strength of the institution and weakening political support for it. In this view, whatever benefits are attributable to Chinese accession (and there are many) would be offset by serious costs to the institution -- the WTO will have "caught the tiger by the tail."

Some might believe that WTO accession for China would be worth this cost. They might argue that: U.S. unilateralism should be constrained; systems friction should not stand in the way of liberalization; the "lock-in effect" on Chinese reforms associated with WTO accession is far more important than these institutional effects; or that WTO accession for China is likely to help ameliorate systems friction (and adverse institutional developments in the WTO) by virtue of the WTO's normative and cognitive impact on Chinese government officials and Chinese policy.

Regardless of how one strikes this balance, the foregoing analysis makes clear that three sets of factors could reduce systems friction and make the WTO a more effective institution in dealing with China. First, a broad interpretation of the doctrine of nonviolation nullification or impairment would help. It would help some powerful Western trading countries tolerate Chinese accession to an instrument the substantive rules of which do not discipline behavior that is likely to be a source of political friction. Many Chinese practices that are not WTO-illegal, but which do impact trade, could then be addressed by WTO-authorized compensation for liberal countries without condemning Chinese behavior. This would not merely resolve domestic political pressures associated with systems friction, but would also be a source of bargaining leverage for liberal trading countries in negotiations to develop rules-based solutions to China-trade systems friction.

Second, China's Protocol of Accession must be tailored to address as many of these problems as possible. Ultimately, the analysis presented here explains why China's Protocol cannot be a typical protocol modeled on those of countries that have preceded it in the accession queue. Commitment and deadlines pertaining to tariffs, quotas, and non-tariff barriers are not enough. Nor is it enough to also promise to phase in new domestic statutes in China on Uruguay Round topics like intellectual property and investment. China's Protocol of Accession should also include meaningful and verifiable commitments pertaining to: state enterprises; transparency; the assertion of central government control over regional and local policies;

corruption; the adoption and enforcement of competition policy; the adoption, maintenance, and enforcement of more stringent regulatory regimes; the development of the judicial system; and other matters. To the extent this is not possible, the Protocol of Accession should except otherwise WTO-illegal trade actions by other WTO Members that are taken in reaction to Chinese behavior in these areas. Perhaps China could declare its acceptance of an interpretation of the non-violation nullification or impairment doctrine that would permit "compensation" to Members in response to Chinese behavior in these areas. Negotiations on these matters will not be easy.

Third, ultimately, of course, the argument here suggests that the best solution to these problems would be if China were to become more like us. The faster and more completely China evolves into a system with a small role for state enterprises, a well-developed judicial system, a more modern and effective regulatory system, greater central government control over regions and localities, and a more democratic character, the better it will fit in with existing WTO rules that were designed for countries modeled on Western democratic liberalism.