China joined the World Trade Organization (WTO) on 11 December 2001 and became its 143rd member at the Doha ministerial meeting. It was a defining moment in terms of its formal and institutional interaction with the world economy. Also, it represented a significant change in China’s approach towards global institutions - from one based mainly on power and ideology to one based largely on commonly accepted rules. China’s entry into the WTO happened after fifteen long years of negotiations between the Chinese authorities, working group on China’s accession, and the major developed state members of the WTO. While most of the major countries were quite enthusiastic with few exceptions about China’s participation in the world trade body, China was keen to ensure its entry only on the basis of its own terms and conditions. As a result of which, the negotiations between China and other countries, especially the US, with regard to outstanding trade issues dragged on for years delaying the entire process. Moreover, these talks and negotiations were from time to time affected by various political considerations, international events, domestic concerns and rigid standoffs. Before analyzing the process of China’s entry into the WTO, the impact of its entry on the trade regime and the contemporary role and function of China within the organization, we must have a historical overview of the entire process for better understanding.

An Overview of China’s Negotiations with GATT and WTO

In the history of GATT and WTO, China had to undergo perhaps the lengthiest process of negotiations for accession. The process of China’s accession to the WTO could be divided mainly into two phases from the perspective of change of GATT to WTO. The first phase is from 1986 to 1994, when China tried to resume its status as an original contracting party to the GATT. The second phase constitutes the period from 1994 to 2001, during which China negotiated with the WTO after it replaced the GATT. Each of these phases could be further divided into different
stages considering the nature of negotiations between China and the international trade regime.

1949-1986: Learning and Initial Engagement

The history of China's relations with the international trade regimes started with the formation of the General Agreement on Tariffs and Trade (GATT), the precursor of the WTO, which came into existence on 30 October 1947 soon after the end of the Second World War. Significantly, China was among the twenty-three founding member states that had endorsed this agreement and thus was part of the organization, which regulated world trade under the GATT (Acharya and Deshpande 2000:167-189). However, after the Chinese revolution in 1949, the KMT government was defeated and driven out by the communists from the mainland, which established its regime in Taiwan as the Republic of China and it announced China's withdrawal from GATT in 1950. The decision to withdraw was inevitable as it was impossible for the ROC government to control the trade and tariff policies of the mainland China. For a time, neither the ROC nor the PRC was represented in GATT. The PRC initially had little interest in trade with the non-communist world and thus little need for GATT membership. In the tense years after its move to Taiwan, GATT membership was not a high priority for the ROC either. However, in the 1960s, as Taiwan began to establish itself as an important trading power, it became interested in participating in world trade through GATT. In 1965, the ROC began attending GATT meetings as an observer.

A major change came about in October 1971, when the PRC was formally admitted to the United Nations, while the ROC was forced to leave the world body. Subsequently, China acquired membership of a large number of specialized agencies affiliated with the UN system, forcing Taiwan to leave them. These included the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and others. In the case of GATT, because of China's insistence on a 'derecognition' of the ROC upon its admission to the UN, Taiwan lost its observer status in November 1971. During the 1970s, China was not ready for GATT membership. It
was only after the adoption of the reform and opening-up policy in the late 1970s that China’s external trade began to experience a rapid expansion and subsequently there was a felt need to enter GATT\(^1\). In the 1970s, China supported the initiative of the developing countries for establishing a New International Economic Order (NIEO) that called for an end to the discriminatory trade policies being practiced by the developed countries of the West. But in 1978, when China reversing its earlier ideological position decided to approach the United Nations Development Program (UNDP) for assistance, it signaled Beijing’s willingness to adopt a more flexible position on the issue of engaging international financial institutions and regimes (Lanteigne 2005:35-36).

China, greatly encouraged by the initial success of the economic reforms programme, took many measures as preparatory steps for gaining entry into the global economic system. China’s membership of the United Nations in 1971 and its official recognition by the United States in 1980 provided the country much needed diplomatic space to reorient its domestic and external policies. Beijing was able to resume its position on the United Nations Interim Commission for the International Trade Organizations, a body given the mandate of making appointments to the GATT secretariat (Pearson 2001:102). In 1980, China was granted most favoured nation (MFN) trading status by the US and the same year China was given the membership of the World Bank and the International Monetary fund (IMF) making the country eligible for international loans from these organizations. For the better utilization of World Bank donations, China Investment Bank, a new institution was created in 1981 and in 1983, China joined the Multi- fiber agreement, a regulatory mechanism for governing textile imports. These were definite steps taken in the direction of re-integration with the global economic regimes and institutions. As the final step, China announced in 1986 its intentions to join the General Agreement on Tariffs and Trade (GATT) and with that, it sought international institutional support for its economic reforms.

1986-1994: Formal Application to Join the GATT as the Original Contracting Party

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, which started a long process of negotiations with GATT Secretariat as well as with China’s trading partners. A working party was established in March 1987 to examine the issue of China’s membership and it met for the first time in October that year. The GATT Working Party on China’s status met over twenty times, but without any conclusive outcome. The Tiananmen Incident of 1989 proved to be a serious setback in China’s efforts to normalize and improve its trade links with the outside world as it resulted in the imposition of economic sanctions and an abrupt suspension of active negotiations until October 1992. Meanwhile, Taiwan began its own efforts to rejoin GATT and succeeded in becoming an observer again in 1992. In the late 1980s and early 1990s, when China emerged as one of the most rapidly progressing economies of the world, it needed institutional engagement at the multilateral level to sustain the reform process and the drive towards modernization. In other words, the opening up required China to alter its stance toward the Western dominated economic institutions and regimes. “This policy was a significant reversal from previous years, when Beijing tended to side with other developing countries in exerting pressure on what they saw as neo-mercantilist regimes, including the GATT as well as the World Bank and the International Monetary Fund (IMF)” (Lanteigne 2005:33). During this period, China made many adjustments to finish the process of negotiations sooner. This was a difficult period for China to learn, adjust and compromise.

1995-1999: Bilateral Agreements on WTO Accession

The applications of both China and Taiwan were transferred to the WTO in 1995, when it was formed to replace GATT and the GATT Working Party was converted into WTO Working Party on the accession of China. Because of China’s political insistence, an agreement was reached that China would enter the WTO ahead of Taiwan and that Taiwan’s membership name in the WTO should read
‘Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu’, or ‘Chinese Taipei’ for short (Chan 2001:11). During the initial days of its negotiations with WTO Working Party, China maintained a rigid stand on the terms and conditions of its entry because of which talks remained largely inconclusive. In May 1995, the assistant minister of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), Long Yongtu led Chinese delegates to have informal dialogues with the WTO members on China’s WTO membership, which was called trial negotiations. In June 1995, China was granted the status of WTO observer. In March 1996, Long Yongtu participated in the first meeting of China-WTO Working Party and had bilateral negotiations with the WTO members. Later China and the United States have had eight rounds of negotiations until the final bilateral agreement was reached (Song 2003:169). On 1 March 1996, Chinese Premier Li Peng, while speaking at the first Asia-Europe Meeting in Bangkok, emphasized the need for mutual accommodation between the WTO and China. He said:

Work together to counter trade protectionism, eliminate trade discrimination, oppose imposition of trade sanctions and promote trade development. WTO ought to be a truly universal and open organization. However, it will be incomplete without the participation of China, a country with about one fifth of the World’s population (Beijing Review 1996: 10).

In late 1998 and particularly in early 1999, China’s position shifted to a more active and determined effort to join the WTO (Fewsmith 2000:268-273). The Chinese leadership had come to realize that globalization was unstoppable and China could not afford to remain outside the realm of this process. This new thinking also reflected a maturing of the Chinese economy as market forces expanded and as more industries developed interests in lowering tariffs to reduce the costs of imports or expanding export markets (Fewsmith 2000:268-273). By this time, the Chinese economy was more linked to the international market than ever before. More specifically, the decision to make a major effort to join the WTO reflected the problems China faced following the Asian financial crisis. As the economy slowed, China looked for new ways to boost exports, enhance foreign investment and make Chinese industry more competitive. And all these could have been achieved only through more interaction with the world market. This broad
appreciation of the importance of the international economy underlay the decision of the Chinese leadership to make the sort of far reaching commitments that would finally bring China into the WTO despite some resistance from the bureaucracy and the party.

The necessary push for concluding the negotiations came both from Premier Zhu Rongji's trip to the United States in April 1999 and President Clinton's personal intervention. However, the near conclusion of a bilateral deal with the US in April 1999 was followed by US bombing of the Chinese embassy in Belgrade in May 1999, which once again scuttled the chances of the deal and thus delayed the process of the impending entry of China into the WTO. The talks resumed after some time and an agreement was finally reached at on November 15 after six days of tough negotiation between Zhu Rongji and the US Trade Representative (USTR) Charles Barshefsky along with Gene Sperling, head of President Clinton's Economic Advisory Committee in Beijing. President Jiang Zemin emphatically announced: 'Where there is a will, there is away' (Xinhua 1999)² What convinced the Chinese leadership to proceed with the deal was the commitment of Jiang Zemin and Zhu Rongji to globalization and a fundamental restructuring of Chinese industry.

1999-2001: Accession to the WTO

The US-China bilateral agreement was followed shortly thereafter by a spate of other bilateral deals in the first half of 2000, including that with the European Union in May that year. After these two significant bilateral deals, the negotiations between China and other WTO member governments picked up pace. During the process of negotiations, Chinese chief negotiator Long Yongtu maintained that China's commitment to the international community for WTO accession includes observing international rules and gradually opening its market. He noted:

The commitment is not aimed at WTO accession alone, but more importantly, at furthering the process of establishing a socialist market economy in China and its drive of opening to

the outside world, so that the country can take a more active role in the process of economic globalization (SWB 2001:4082).

“One element contributing pressure on China and members to conclude bilateral accords rapidly 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” (Gertler 2003:62). As a result, by February 2000, China had concluded negotiations with twenty-one WTO member states. After completing market-access negotiations with most of the major member states, China strived hard to clear the pending outstanding issues with the Working Party. The final meeting of the Working Party, with informal sessions in the second week of September and formal meetings on 17 September, was devoted to complete all technicalities and overall review of the documents (submitted by China) to ensure consistency among the various elements of the accession package. China and Working Party members finally reached agreement on all issues of contention like commitments relating to the administration of the trade regime, transparency and judicial review, special trade arrangements, import and export licensing, price controls, taxes and charges levied on imports and exports, export subsidies and domestic support in agriculture etc (Gertler 2003:55-67). After reaching a consensus on the final accession package, the Working Party forwarded it 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 the acceding government becomes a member of the WTO thirty 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. The Director-General of WTO Mike Moore underlined the significance of this moment in his declaratory speech:

International economic cooperation has brought about this defining moment in the history of the multilateral trading system. With China's membership, the WTO will take a major step towards becoming a truly world organization. The near-universal acceptance of its rules-based system will serve a pivotal role in underpinning global economic cooperation (WTO 2001:1).

One day after China was admitted to the WTO, Taiwan also gained admission, but as a developed country under the long and winding name. Chinese Taipei became the 144th member in January 2002, under the same terms and conditions as for many other members and on an equal footing with them. The outcome was seen as a win-win solution for all parties concerned. With membership of the WTO secured, China becomes a full-fledged member of the Bretton Woods system, having joined the World Bank and the International Monetary Fund in 1980, this event marked a new stage in China’s transition from socialism to a largely market-driven economy and in China’s arduous process of opening up and reform that had started under Deng’s leadership some twenty-three years ago. China’s formal integration with the global economy was thus greatly deepened (Chan 2003: http://www.chathamhouse.org.uk/pdf/research/asia/ChinaWT.pdf).

The Process of Adaptation to the WTO

As has been mentioned, much before the WTO entry, China had started the process of reforming its legal, economic and administrative structures to make them compatible with the international standards. The Chinese leaders, especially Deng and after him Jiang could foresee the challenges that China would have to face by joining formal trade regimes like the WTO. The leadership was prepared to undertake radical systemic changes, even subtle ideological alterations, for the sake of unhindered access to international trade and commerce. Only a few months before the final agreement with the WTO, on the occasion of 80th anniversary of the Chinese Communist Party (CCP), Jiang in his speech openly invited private businessmen and entrepreneurs to join the party (Jiang 2001: www.chinadaily.com.c
This concession marked an official confirmation of a trend which had been growing in China from the beginning of the Dengist reforms: that private sector workers and independent entrepreneurs would be considered integral political and economic actors able to join the party. This invitation to the private sector was part of a broader explanation of Jiang’s ‘Three Represents’ theory of the new role of the CCP. There was little doubt that both the announced opening of the party to the private sector and the ‘Three Represents’ doctrine as a whole were meant to signal China’s readiness for the WTO and the international economy” (Lanteigne 2005:50). Along with the paradigmatic shift in its position on private capital and entrepreneurs, China also started the process of reviewing domestic laws and regulations. In November 2000, prior to the thirteenth meeting of China-WTO working group, Chinese government published documents for policy adjustments. In the first part, there were 36 laws, of which 29 needed revision and in seven other fields new laws were needed. The second part included 120 government regulations, which would be revised in due course (Song 2003:164-195). China also acknowledged the need for further opening up the market, changing the functioning of the government and raising management efficiency so that the WTO requirements could be fulfilled. The Outline of the Tenth Five-year Plan (2001-05) pointed out, “Government functions should be further changed so as to concentrate on macro-control and creating a favourable market environment and not to directly interfere in normal production operational activities of enterprises, in accordance with the requirement of developing a socialist market economy. Reform of the system of examination and approval by the government should be accelerated to reduce administrative reviews and approvals on a larger scale, to standardize examination and approval behaviour and strengthen the supervision mechanism. The role of chambers of commerce and trade associations as intermediary organizations should be brought into play. Reform and streamlining the government should continue to solve problems such as obscurity of responsibilities, overlapping of management levels and low efficiency. The system of public service should be improved” (Mengkui 2002:172)
China's Commitments to WTO

In joining the WTO, China agreed to liberalize its trade regime, open its markets to foreign goods and services and offer a more predictable environment for trade and foreign investment in accordance with WTO rules. China's WTO obligations span eight broad areas, each of which includes scores of specific Chinese commitments to adhere to general WTO agreements and principles as well as country-specific provisions requiring greater market access for foreign goods and services. These eight areas are- trading rights and distribution services, import regulation, export regulation, internal policies affecting trade, investment, agriculture, intellectual property rights and services (Yager 2005:3). China's membership of the WTO carries a number of duties and responsibilities laid down in a 900- page long legal document. In essence, China has made the following commitments which clearly establish the foundations of a free trade regime in the country.

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

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3 China's WTO commitments are documented in (1) Protocol on the Accession of the People's Republic of China, which contains the terms of membership; (2) Report of the Working Party on the Accession of China; and (3) Annexes containing market access commitments.
To stop maintaining or introducing any export subsidies on agricultural products (WTO 2001: www.wto.org/English/news_e/press01_e/pr243_e.htm).

We must look at how China responded to the adoption of the five fundamental principles of the GATT and WTO. These principles are: (1) nondiscrimination (the Most-Favored-Nation [MFN] principle, under which the best market access given to any one member is extended to all other members); (2) market opening; (3) transparency and predictability; (4) undistorted trade; and (5) preferential treatment for developing countries (Gertler 2003:55-67).

**Nondiscrimination**

The general principle of nondiscrimination requires WTO members to give equal treatment to all the (foreign) trading partners [it is called the MFN principle], and not to discriminate between domestically produced and imported goods or services in their internal markets. China, like all other members, has committed to abide by all the WTO agreements, including those provisions requiring application of MFN and national treatment principle. In its Accession Protocol, China has agreed to undertake additional commitments in order to ensure the smooth application of these non-discrimination principles including eliminating dual pricing systems, phasing out restrictions on trading, and introducing more uniform administrative arrangements and judicial review. All foreign enterprises, including those that are not registered or that have not invested in China, are to be accorded no less favourable treatment than that accorded to the national enterprises of China. These agreements are of crucial importance not just for the central authorities but also for the lower tiers of government, which are often involved in internal trade and regulation (Will, Bhattacharyya and Li 2002 :http://siteresources.worldbank.org/INTEAP/REGTOPINTECOTRA/Resources/chapter+1.pdf).

**Domestic Market Opening**

The market opening principle is promoted in the WTO basically to gradually cut down the trade barriers. Under this principle, the member states are pressed to
liberalize their trade regimes so that the barriers to the free trade could be curtailed. With respect to market opening, China has significantly reduced its tariff and non-tariff barriers as part of its bid to enter the WTO. The cuts in import tariffs that China has offered are very substantial, and will result in a reduction in the weighted average tariff from 13.3 percent in 2001 to 6.8 percent at the end of the implementation period. These reductions are in fact small in relation to the reduction of 27 percentage points that China achieved between 1992 and 2001. China’s commitments to liberalize trade in services are extremely large relative to those of almost all other countries, though they are more often subject to qualifications or reservations than those of other countries (Will, Bhattasali and Li 2002: http://siteresources.worldbank.org/INTEAPREGTOPINTECOTRA/Resources/chapter+1.pdf).

Transparency and Predictability

Transparency and predictability are key elements of multilateral trading system. The basic transparency principle contained in Article X of the GATT calls on member governments promptly to 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 licenses, and by encouraging members to fasten together their market-opening commitments in goods and services. China has committed to abide by the WTO’s transparency obligations across the board including provisions for uniform application of the trade regime and for independent judicial review (Gertler 2003:63-64). China has also promised to adopt a mechanism whereby concerned parties can bring problems of local protectionism to the attention of the central government. Another important contributing factor is China’s binding of its entire tariff schedule for goods, almost always at tariff levels below current

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4 The implementation period extends to 2010
applied rates, not only reduces tariffs and their variance, but also increases predictability by ruling out tariff increases in the future. Annual transitional reviews to be held for eight years following China's accession will provide additional information about China's regime and its reforms during that period. Also important for increasing transparency are China's commitments to phase out restrictions on trading rights for all products, except for a short list of commodities, and to allow entry of foreign, and frequently domestic, suppliers into distribution and wholesale services (Will, Bhattasali and Li 2002: http://siteresources.worldbank.org/INTEAPEGTOPINTECOTRA/Resources/chapter+1.pdf). While difficulties may exist with respect to variations in treatment in different parts of China's customs territory, as well as the perceived lack of judicial independence, there can be little doubt that the Chinese government is committed to carry out the necessary reforms to implement these obligations in an uniform and impartial manner.

**Undistorted Trade**

The WTO principle of undistorted trade involves general disciplines in areas such as subsidies and countervailing measures, antidumping, and safeguards. China has made more stringent commitments than those normally required, including one not to subsidize its agricultural exports, and, for industrial goods, disciplines on some forms of export subsidies generally allowed in developing countries. China has also indicated its intention to join the Agreement on Government Procurement, which is aimed at ensuring fair competition rules in purchases by government procurement agencies (Gertler 2003:56-58).

**Preferential Treatment for Developing Countries**

The principle of preferential treatment for developing countries permeates the entire WTO Agreement, providing transition period 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. It was a serious issue of debate as to whether China should be accorded any preferential treatment or not throughout the period of negotiation process. Even if 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 such as phasing out of the quotas and import licenses, 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 (Gertler 2003:55-67).

China’s Compliance with the WTO Commitments

By signing the documents of accession, China has accepted extraordinary responsibilities of changing its pre-1978 trade practices. Has China become a responsible member of the WTO then? No one can say for sure, despite the assurances of its top leaders, including Premier Zhu Rongji and Vice Premier Wen Jiabao that China will (South China Morning Post, 18 February 2003:7). Its trading partners are, however, not so sure: they are rather cautious, and they have taken steps, so that they can constantly monitor China’s compliance with the rules it has agreed to follow.

China’s accession agreement is the most comprehensive by any WTO member to date, and, as such, verifying China’s WTO compliance is a challenging undertaking for two main reasons. The first reason is the scope of the agreement: The more than 800-page document spans eight broad areas and sets forth hundreds of individual commitments on how China’s trade regime would adhere to the organization’s agreements, principles, and rules and allow greater market access for foreign goods and services. The second reason is the complexity of the agreement: Interrelated parts of the agreement will be phased at different times, and some commitments are so general in nature that it is very difficult to ascertain whether China has fully complied with its obligations in some cases. On the one hand, some of China’s WTO obligations require specific actions from China such as reporting

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particular information to the WTO or lowering a tariff on a product. Assessing compliance with these specific types of commitments is relatively easy. On the other hand, a significant number of commitments are more general in nature and relate to systemic changes in China’s trade regime. For example, some commitments of this type require China to adhere to general WTO principles of nondiscrimination and transparency. Determining compliance with these more general types of commitments is more difficult and can complicate the dialogue over achieving compliance.

The PRC agreed, as part of its WTO accession, to an annual review of its compliance with WTO obligations – the Transitional Review Mechanism (TRM) – during its first 10 years in the organization. The TRM was to be a tool for maintaining pressure on China to comply with its market-opening commitments. The TRM is an unprecedented measure requiring China to provide detailed information to WTO members and to give them the opportunity to raise questions about Chinese compliance with its WTO commitments. China’s trading practice will be reviewed annually, in terms of its laws, regulations and programmes, in the first eight years after its accession to the WTO followed by a final review during the ninth and the tenth year. In this TRM process, the sixteen subsidiary bodies of the WTO that have mandates covering China’s commitments such as the Council for Trade in Goods, the Committee on Subsidies and Countervailing Measures, the Committee on Antidumping Measures will review China’s compliance. China is under the obligation to provide relevant information ‘in advance’ of these reviews. The results of these reviews will then be reported to the WTO General Council, which will conduct the final review. China’s accession Protocol gives a detailed list of specific information it must provide, including economic data in ten fields ranging from foreign exchange to pricing policies as well as copies of laws and regulations on issues ranging from import licensing to government procurement (Lash 2002:232). The U.S. will no doubt participate actively in the TRM process and to study these reviews very carefully to make sure that China complies with

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WTO rules, and it will not hesitate to put pressure on China to make necessary changes. The idea of this TRM is to provide peer-group pressure on China for conformance to obligations.

The Dispute Settlement Mechanism is, on the other hand, available to member countries of the WTO to invoke if they feel that they have not been fairly treated by other member countries. The general rule is that the complaining country can ask the target country to discuss the issue involved. If the result is not satisfactory, the complaining country can take the case to the WTO for settlement before a tribunal. If the targeted country fails to act upon the advice of the tribunal, then the complaining country can take retaliatory measures against it. In most cases, bilateral agreements and compromises are made before the dispute is to be decided by a trade tribunal. Going through this dispute settlement process is not entirely an ideal way to resolve possible trade conflicts with China. The U.S. intends to help or put pressure on China to change before reaching such a stage, but, as many American officials have reiterated, the U.S. is not averse to use this mechanism as a last resort in case China makes serious defaults. Thus, China has to comply in terms of both changing the domestic policies as well as reforming the processes of governance to fulfill its obligations to the WTO.

**Policy Compliance**

It is relevant to examine as to what steps China promised to undertake to meet its compliance commitments and how far China has succeeded in fulfilling its commitments. What China has promised to do to comply with WTO rules can be gleaned from the lengthy documents that it has signed to complete its membership application. Those documents include several protocols laying down China's promises after accession. They include various ways to bring China's trade practices in line with the global trends of trade liberalization such as reducing tariffs, increasing transparency, cutting government subsidies, enacting necessary legislation, and instituting administrative organs to enforce those legislations. Copies of these documents can be found on the websites of the WTO, China's
From the perspective of WTO members, enforcement of the WTO administered agreements consists of two aspects: internal implementation by the members and external oversight by the WTO. In relation to internal implementation the Agreement Establishing the World Trade Organization provides that, 'Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.' The WTO oversees internal implementation with a system of binding dispute settlement and a regular policy-review mechanism (the provision of TRPM, which has been discussed earlier). As a WTO member, China is responsible for any failures of its sub-national entities to comply with WTO law; and its internal law cannot provide any excuse for failure to adhere to its international obligations because, according to Article 26 of the Vienna Convention on the Law of Treaties to which China is a party, a WTO member cannot invoke its domestic law as justification for failure to carry out its international obligations.

In the process of negotiation of the Protocol of Accession, China made it clear that the WTO agreements and the Protocol of Accession specifying the terms and conditions for China’s accession to the WTO fall within the category of ‘important international agreements’ subject to ratification by the NPC Standing Committee. While there was speculation about the NPC Standing Committee’s stand on the agreement, even no formal debate took place in the NPC or its Standing Committee; the NPC Standing Committee completed its ratification formality even before the completion of the draft Protocol on 17 September 2001 (Qingjiang 2003:135). The NPC’s quick approval of the WTO Agreement reflected China’s willingness to move that extra step forward to embrace the WTO regulations. In the Protocol of Accession, China had made it clear that it would implement the WTO agreements through revising its existing domestic laws and enacting new ones fully.

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7 See, for example, China’s WTO accession document published by the Ministry of Foreign Trade and Economic Cooperation, which can be viewed at www.moftec.gov.cn/moftec.cn/WTO/WTOlaw.html.
8 Article XVI.4 of the Marrakesh Agreement Establishing the World Trade Organization.
9 China ratified the Vienna Convention on 3 September, 1997.
in compliance with the WTO agreements, which involved the examination and review of all existing laws, regulations and rules. Amending laws and regulations in line with WTO agreements has been a major issue of contention regarding China’s accession to the WTO. The WTO agreements cover a wide range of issues that traditionally are within exclusive domestic administrative jurisdiction; the scale of amendments required is unprecedented in the history of Chinese legislation and administration. In view of the enormous task ahead, China started to introduce various reforms during the final stage of entry negotiations in the late 1990s. A significant member of laws and regulations needed to be overhauled in keeping with the WTO obligations. It included not only those that were directly inconsistent with WTO agreements but also those that required undermining the powers of the Chinese government in some ways.

As a matter of practice, the NPC and its Standing Committee first revised primarily six laws that contained provisions inconsistent with the WTO agreements namely the Chinese-Foreign Equity Joint Venture Law, the Chinese-Foreign Contractual Joint Venture Law, the Wholly Foreign-invested Enterprises Law, the Patent Law, the Trademark Law and the Copyright Law. The State Council examined 756 pieces of administrative regulation that had been adopted before the end of 2000, repealed 71 regulations and declared 80 others void in October 2001. In addition, various regulations including the Regulation on Travel Agencies and the Regulations on Foreign-invested Financial Institutions were amended. The ministries also acted to this end. For example, the State Development Planning Commission (SDPC) had among a total of 341 regulations and instruments released before the end of 2000, repealed 124 price regulations and committed to further revamp some more regulations in order to fit its price law into the framework of the WTO. By the end of 2000, a year before its entry, the Ministry of Foreign Trade and Economic Cooperation had reviewed over 1,400 laws, regulations including six statutes (of which five were revised), 164 State Council regulations (of which 114 were repealed and 25 amended), and 887 of its own ministry regulations (of which 459 were repealed and 95 amended)(Chan 2003: http://www.chathamhouse.org.uk/pdf/research/asia/ChinaWT.pdf). In addition, the Ministry had signed 191 bilateral agreements, 72 bilateral investment treaties, and 93 tax treaties. In the first two
months of the year 2001, various ministries and commissions of the State Council were reported to have reviewed some 2,300 laws and regulations, of which 830 were identified as in need of repeal and 325 as in need of revision (Chan 2003: http://www.chathamhouse.org.uk/pdf/research/asia/ChinaWT.pdf). Again, in the year 2004, a number of substantial and significant changes were made to the Foreign Trade Act (FTA) 1994 through amendment. First, the NPC adjusted those FTA 1994 provisions, which were inconsistent with China’s commitments to the WTO. Second, the FTA 2004 provided for implementation mechanism and procedures to enable China to exercise its rights as a WTO member in accordance with its commitments and the WTO agreements. Third, the NPC passed amendments responding to various issues, including intellectual property, administrative efficiency and external trade barriers. These issues were not sufficiently addressed under the FTA 1994. As Ministry of Commerce (MOFCOM) stated, the 2004 amendments have taken into consideration “the general situation since 1994 and the needs in the promotion of … international trade” (see Wang 2006:12).

**Structural Compliance**

The process of identifying laws and regulations that are inconsistent with the WTO stipulations is a very difficult and complex process. It involves some discretion and potentially permits a government department, agency or official to act in a way that might violate the WTO agreements. Moreover, in view of the massive changes required there still exists quite a few gaps or inconsistent laws and regulations after the accession. In this context, where new provisions have not yet been enacted, or inconsistencies not altered, Article 142 of the General Principles of Civil Law shall be applied to ensure the prevalence of relevant WTO agreements over inconsistent domestic laws, regulations and rules. In the Protocol of Accession, China confirmed that revision would occur ‘in a timely manner so that China’s commitments would be fully implemented within the relevant time frames’; ‘If administrative regulations, departmental rules or other measures were not in place within such time frames, authorities would still honour China’s obligations’ under the WTO agreements and Protocol (Qingjiang 2003:144).
China also needs to adopt new domestic laws, regulations or measures in accordance with its obligations under the WTO agreements. Prominent examples are adopting regulations permitting foreign investment in sectors where foreign participation had been prohibited, uniform application of laws and regulations and measures, and the establishment of mechanisms of judicial review. In an effort to honour its WTO commitments, the State Council adopted various measures allowing foreign participation in the medical care, rail freight services, printing, telecommunications services, maritime transportation, insurance, cinema and banking industries, which was a significant policy change in the economic realm (Qingjiang 2003:148).

In addition to removing inconsistent laws and enacting new laws, China faces the onerous task of ensuring uniform enforcement of WTO agreements and obligations in its regions which are vastly different from each other in terms of economic prosperity, degree of openness, tradition, and governance structure and so on. Law enforcement also varies from region to region not only because of differing local regulations and rules but because of its discretionary application from region to region. Some members of the WTO Working Party on China’s accession were reported to have expressed concern that sub-national governments in China might take measures inconsistent with China’s WTO obligations and that the central government would not or could not remove such measures. China’s representative assured them that local governments had no autonomous authority over trade-related matters (WTO 2001:3), and that the central government would “ensure” [not merely take the “reasonable measures” called for by Article XXIV: 12 of the General Agreement on Tariffs and Trade (GATT) in 1994] that local government regulations conformed to China’s WTO obligations. This assurance is one of China’s formal commitments. Article XXIV: 12 of the GATT 1994, which presupposes a degree of independence on the part of local governments, simply does not apply10. Thus, unifying rules, laws and regulations and ensuring their uniform implementation is an important task in China. However, it is expected that the supremacy of Communist Party Central Committee and its Politburo in the political structure, and the leading

role of the State Council in the administrative structure should facilitate uniform administration of the WTO agreements in the entire territory of China. Moreover, the political leadership of China is quite keen to put in place a more legalistically astute regulatory framework so that the international agreements (especially the economic ones) could be properly implemented. The promulgation of the Legislation Law in 2000 has provided a possibility for clarifying the limits of the legislative power, thus contributing to the uniform application of law. The adoption of Regulations on the Procedures for Enacting Administrative Regulations and Regulations on the Procedures for Enacting Ministerial Rules on 26 November 2001, and Regulations for Filing Regulations for Record on 21 December 2001, which became effective on 1 January 2002, are steps undertaken by the Chinese government towards the uniform application of law across China.

Apart from the changing the rules, regulations and laws and replacing some of them with new ones, China also introduced systemic changes to adapt itself to the WTO regime. China opened more domestic markets. It reduced import tariff of commodities with 5300 items. The general tariff level was reduced from 15% to 12%. Quotas licenses and non-tariff measures on eight types of products, such as grain, wool, cotton and chemical fertilizers were eliminated. The examination and approval of foreign capital into banks, insurance and distribution has been speeded up. China also made efforts in streamlining the organizational and institutional structures and processes. Specialized government departments in charge of WTO affairs were set up. These are the bureau of WTO, the bureau of fair trade and the bureau of industry damage investigation etc. China also established a WTO office in Geneva and appointed a special ambassador.

China has also taken a number of steps to remove all the barriers to trade and further open up the economy in consonance with the WTO commitments. Over the last decade, China has substantially reduced its tariff and non-tariff barriers- all tariffs are now bound at newly lowered statutory rates. In 2005, the average applied most-favoured nation rate for imports was 9.7 per cent, compared to 39.5 per cent in 1994. Prior to WTO accession, China used quotas and licenses extensively to restrict trade flow. After accession, import quotas were abolished and the number of tariff lines subject to licenses was cut by half. While state trade activities continues,
their operations have become much more transparent: all goods subject to state trading are listed in the Protocol, the adjustments of that list and the firms authorized to trade in those goods are published by MOFCOM and notified to the WTO.

Since China opened its economy to foreign investment in 1979, the government has maintained control over the entry of foreign capital through an elaborate system of examination and approval. For more than a decade foreign investment projects have been classified by sector into the categories of encouraged, permitted, restricted and prohibited. The government maintains the Industry Guidance Catalogue for foreign investment which provides a detailed list of specific industries under each category. The catalogue has been substantially revised following accession. The number of encouraged industries has increased from 186 to 262, while restricted industries declined from 112 to 75. About 75 percent of foreign investment in China is now in wholly foreign owned companies. China made extraordinary market access commitments in services. China is bound by specific commitments in nine service sectors out of the 12 service sectors classified under General Agreement on Trade in Services (GATS) in crucial segments like distribution, construction, transport, communication and financial services. Apart from provisions related to foreign investment, trade, tariffs etc, there are so many other provisions of WTO which demand China’s compliance. One such provision is granting national treatment to foreign companies doing business in China. The WTO accession has significantly expanded China’s obligations to accord national treatment to foreign investment. While the accession protocol does not require China to extend all-round national treatment to foreign investors, it enlarges the traditional scope considerably by requiring that foreign investors be given national treatment with respect to China’s market access commitments in services, the right to engage in the import-export business, and the conditions affecting foreign-invested enterprises (FIEs) production and sales in China, such as the prices and availability of public utilities and other factors of production. The latter two aspects go beyond the scope of WTO national treatment provision and are therefore special WTO-plus obligations for China. With China’s entry into the WTO, FIEs have gained national treatment in new areas where as state owned enterprises (SOE) have lost many of their privileges, and domestic private enterprises, which are fast growing in number
continue to receive less favourable treatment than both FIEs and SOEs in terms of market access, bank financing and access to capital markets. In fact, due to excessive preferential treatment accorded to the FIEs, there is resentment among the domestic enterprises and they now demand removal of FIE preferences and thereby create a level playing field for all the players in the economy. The WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides a comprehensive legal framework for the protection of IP rights. China has made great efforts on both the legislative and institutional front. On the legislative front, amendments have been made to all major IP laws, including the Patent Law (2000), the Trademark Law (2001) and the Copyright Law (2001) and new regulations have been issued on the protection of computer software (2001), layout designs of integrated circuits (2001) and new plant varieties (2001). In addition to administrative and civil remedies, specific crimes of IP violation have been added to the criminal code. Institutionally, an elaborate government apparatus has been set up to administer and enforce IP laws and a special IP adjudication division has been established within the People’s Courts. As a result of these efforts, China today has an extensive and basically WTO-compliant legal framework for IP protection. However, IP violations remain rampant in China as the enforcement of IP laws have not been properly pursued by the government agencies responsible for this. Through the government has stepped up its efforts towards proper enforcement, weak protection of IP rights remains one of the main complaints of the foreign companies doing business in China. Inadequate enforcement of IP rights in China has prompted the United States to lodge a formal complaint in the WTO alleging failure on the part of China to protect IP rights according to TRIPS standards. Under severe international pressure, days before the United States filed the complaint, the Supreme People’s Court and the Supreme People’s Procuratorate jointly issued a judicial interpretation, lowering certain thresholds for criminal punishment for copyright piracy by 50 per cent.
The Problem Areas with regard to WTO Compliance

Despite the best efforts of the Chinese government, concerns remain as to whether China would be able to fully comply with the WTO stipulations. China faces problems with regard to legal changes, standard verification, improving trade practices and bringing necessary changes in the structures and processes of governance while complying with the WTO.

Legal Impediments

The most serious concern is about the prospects for China becoming a fully participating member of the WTO focuses on the role of law and the nature of the legal system. Many observers are worried that China, given its rudimentary legal system, may not be able to live up to the standard of responsibility of a normal state and to the compliance standard expected in international trade rules. Pitman Potter has emphasized that in China, "law is conceived of as an instrument of rule." Under this approach, the law can be changed by the ruling authorities according to whatever policy objectives they have in mind. Potter terms this the "instrumentalism" approach to the law, in contrast to an approach that sees the law as a "source of norms and principles of general applicability that might give rise to rights and protection for the populace." He goes on to add: "One consequence of legal instrumentalism as practiced in China is that laws and regulations are intentionally ambiguous so as to provide the policymakers and implementing officials alike significant flexibility in interpretation...[L]aws are replete with vague passages" (Potter 1995:5). Moreover, the courts and the legal system in China are viewed largely just as another part of the bureaucratic structure of the state. The legal apparatus of China is used as an instrument to implement the state policies; it does not enjoy the kind of autonomy and stature of its counterparts in Western countries. The concept of supremacy of law is absent in China (Holton and Lin 1998). This problem with the law's institutional setting suggests that for China to

\[11\] See Testimony of Donald Clarke, Professor of Law, University of Washington, Seattle, at a hearing of Congressional-Executive Commission on China on 6 June 2002 to consider China's WTO compliance, at www.cecc.gov/pages/hearings/060602.
adhere to the policies of the WTO in the fullest sense calls not just for a change from one body of law or one set of rules to another but rather for a change in the attitude towards the role of the law. Though the Chinese leadership is willing to change this perspective on law, it might be a long drawn process creating anxiety in the world community regarding China's intentions. The Chinese authorities express their wish to develop a legal system that is consistent with internationally accepted standards (Peng 1996:5).

Apart from economic policies and regulations, China's adaptation to the WTO regime has necessitated significant changes in the structures and process of governance most notable being the judicial system. There have always been apprehensions and questions regarding impartial application of law in China independent of political influence. China is yet to establish a comprehensive legal system. In China, law there is still regarded an instrument of policy rather than an end in itself. Debate both within China and abroad about the rule of law has tended to focus on the dichotomy drawn between the 'rule of law' where the state and the party are subject to the laws, and 'rule by law', where law is used as a tool of management by the state (Feinerman 1997; Potter 1998). Despite the Chinese government's best efforts to establish a proper legal system in accordance with the international standards, the awareness and consciousness about the laws and legal norms have not been developed amongst the Chinese public as well as the government officials. They still look upon the state as the final arbiter of all the disputes and conflicts. In such a context, the question one must raise is how would China effectively comply with WTO stipulations such as maintaining transparency, enforcing judicial review and ensuring uniform administration of law.

Standard Verification

There have been some other areas of concern which confirm that China has not been able to fully comply with WTO obligations. One such area where barriers have not yet been removed is the use of technical and health standards. The WTO has detailed rules on standards, requiring that domestic technical and health regulations not be more trade-restrictive than necessary and certainly not be applied
arbitrarily or discriminatorily. To that end, WTO members are obliged to use relevant and available international standards as the basis for their national standards. Although China has revised relevant laws to ensure consistency with the WTO regulations, its practice in setting and applying standards has become an increasing concern for its trading partners. Presently, a majority of the Chinese standards are not based upon international standards. There are complaints regarding a number of unnecessary and cumbersome procedures for product registration, licensing and certification that effectively hinder imports and exports. Moreover, China has attempted in recent years to develop its own unique standards in areas where internationally recognized standards already exist, a well known example of which is the Chinese WAN security standard for wireless LAN. Such attempts raise the issue of consistency with WTO requirements and are viewed as a strategy to benefit Chinese domestic industries at the expense of their foreign competitors.

**Trade Practices**

Another such area is trade remedies that refer to antidumping, anti-subsidy and safeguard mechanism used by an importing country to remedy injuries caused by imports to its domestic industries. As these remedies raise trade barriers and can easily be abused by protectionist forces, the WTO imposes strict disciplines on their use. The WTO trade remedy rules are extremely complex and complaints about its violations constitute a large member of WTO disputes. The past decade witnessed the establishment of a trade remedy regime in China. The first Chinese antidumping and anti-subsidy regulation was issued in 1997 and the first safeguard regulation in 2001. These regulations generally follow WTO standards, but contain much less details. Under these regulations, MOFOCIM is designated as the chief regulatory authority for conducting all relevant investigations and making decisions on trade remedies. Despite its nascent trade remedy regime, China has quickly risen to be one of the top users of antidumping measures in the world. Japan, South Korea, the United States and the European Union are among the most frequent targets of China’s antidumping investigations. Besides, China’s own experience as the victim
of discriminatory trade remedies has affected its position. For years, China has been by far the most frequently targeted country in antidumping cases.

Transparency is one of the key features of WTO that requires member states to publish all trade-related laws, regulations and other government measures of general applications before their implementation and enforcement and to notify the WTO of any change in such laws, regulations or measures. Due to China’s weak record of maintaining transparency, it was asked to undertake additional transparency obligations that are more stringent than the general requirements. China has taken concrete steps to implement its transparency commitments. These include efforts to open up the rulemaking process to more public participation and to standardize the procedure for granting administrative permissions. For instance, the Law on Legislation (2000) mandates that government agencies solicit public comments during the drafting of administrative rules. And the Law on Administrative Permissions (2003) forbids government agencies from using unpublished documents as the basis for granting administrative license. Increasingly, laws, regulations, administrative rulings, judicial interpretations and court decisions have become generally available on the official websites. Even though transparency in the Chinese regulatory system has improved markedly in recent years, China has yet to implement its WTO commitments on transparency fully, and lack of transparency still ranks among the top concerns for foreign companies doing business in China.

As the judiciary in China can hardly be termed as independent, there are serious concerns regarding China’s compliance with the (judicial) review provision of the (WTO) Draft Protocol. The power of the judiciary in China is limited as it is not allowed to interfere in the exercise of administrate powers of the state and also not entitled to review and change administrative decisions. Another is whether judges and courts are able to exercise their adjudication function in accordance with the law and without interference in individual cases (Biddulaph 2003;136). Again the Draft Protocol requires that “laws, regulations, decisions and rulings be administered in an uniform, impartial and reasonable manner” which China has not yet been able to achieve as local governments wield much discretionary authority over judicial matters.
**Structural Inadequacies**

The WTO agreements essentially reflect the requirements of a market economy and can function well in the prevailing legal system of the established market economies. An important aspect is that the implementation of law heavily relies upon an independent, fair and transparent legal and judicial review system. In view of this, the WTO agreements set out corresponding requirements. For example, the General Agreement on Trade in Services (GATS) provides that 'Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide at the request of an affected supplier for the prompt review of, and where justified, appropriate remedies and administrative decisions affecting trade in services' (Qingjiang 2003:142). In contrast, the Chinese Administrative Procedural Law provides that no organ or no individual can challenge before the court any administrative rules, orders and acts of binding nature. Moreover, in China, the issue of separation of the judiciary from the executive or the administrative organ of the state is politically very sensitive one as any alteration to the status-quo might undermine the foundation of the regime based on party and administrative control. From the perspective of the Western countries, however, China could accommodate the demands of WTO members only when such institutions are established in China. The pragmatic leadership of China being conscious of its responsibilities and obligations in the wake of the concerns raised by the WTO member countries has already initiated reform in limited areas, which, it is expected, will gradually expand into areas that are more sensitive. Already China has continued to publicize the consequences of its entry into the WTO to the general public including the impact arising from the passing of so many rules and regulations to comply with the global trading norm. In December 2001, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) established two WTO-related departments: the Department of WTO Affairs; and the Fair Trade Bureau for Imports and Exports. The main tasks of the Department of WTO Affairs are to make sure that China carries out its promises in the WTO’s goods trade and services trade agreements and that the country lays down laws and rules in line with WTO principles. Two offices under the department are responsible for answering WTO’s...
enquiries into China’s trade policies and for notifying the WTO of China’s policies, laws and rules on trade and investment (Xinhua News Agency, 27 November 2001). The Fair Trade Bureau is responsible for conducting investigations into imports and for determining whether or not anti-dumping, anti-subsidy and protective measures are applicable. The bureau guides and coordinates local companies in responding to foreign charges of dumping and subsidy. It also investigates into other countries’ discriminatory trade policies towards China and ensures that Chinese companies enjoy fair trade in the global market through negotiations and consultations with other countries (Xinhua News Agency, 27 November 2001). To give another example, the Chinese government has introduced judicial review as required by the TRIPs Agreement through incorporating the TRIPs provisions into the intellectual property rights (IPRs) laws. It has also introduced judicial review in the Patent Law and the Trademark Law, which previously denied such review. China has conducted an intensive work programme to examine and revise the IPR laws, administrative regulations and ministerial rules relating to the implementation of the WTO agreements and China’s accession commitments.

Despite these positive steps taken by the Chinese government to ensure proper implementation of the WTO agreements, there are apprehensions that if the institutional defects in the Chinese legal system are not rectified sooner than later, it might retard implementation and compliance of the WTO obligations. The transparency requirement of Article XI of the GATT is the recognition that lack of a clear and consistent framework of laws and regulations is an effective barrier to the participation of foreign firms in the domestic market and, conversely that transparency greatly enhances business conditions, promotes commerce and reduces opportunities for corruption. Hence a major institutional defect likely to affect WTO compliance is the existence of a wide variety of entities that can make statutory law in China, leading to the proliferation of legal forms and inconsistency between them. Moreover, China’s bureaucracy is known for its reluctance to implement laws, selective application and failure to enforce laws.

Finally, in addition to the issue of standardization of China’s legal, administrative and bureaucratic structures, its approach to international law will influence its WTO commitments. While traditionally China questioned the
legitimacy of the international law on the ground of its Western character, there are numerous signs of a radical shift in this approach after 1978. The economic reform policies of China also in a way make its joining the global regulatory framework inevitable. For example, although China still holds to a view of its own absolute sovereignty, it displays increasing acceptance of the universally applicability of rules of general international law and some national laws refer specifically to international customs and practices. Moreover, the Sino-US agreement, Sino-EU agreement and finally the Protocol of Accession reflect an increasing willingness to submit itself to the international dispute settlement mechanism. Recent Chinese practice has been to recognize rights of private parties to enforce private rights at international law. Ultimately, China's desire to participate in international rule-making may encourage a shift in its attitude to international law.

Implications of China's Entry into the WTO

The WTO is seen as the most important instrument of globalization responsible for promoting, facilitating and regulating free trade. China's membership of the WTO has in a way ensured a legitimate place for it as a respectable member in the open international economic system 'enabling it to enjoy equal trading treatment and to take part in formulating trade regulations' (Kent 2004:532). Moreover, the WTO links China with the world economy by allowing more Chinese enterprises to operate outside the country, facilitating foreign investment in China and helping in opening up various sectors of industry (Wen and Zhang 1999:1-2). Again, since China was not a member of any regional trading block at that point of time, it desperately needed the membership of the WTO to remain competitive in the world market. Motivated by all these factors, China made wide concessions to the international community during its numerous multilateral and bilateral negotiations and took the unprecedented steps to renegotiate the terms of its (economic) sovereignty to become a member of the world trade body (Kent 2004:530-533). In the post-Maoist era, the primary goal that China has set for itself is to achieve high economic growth, the realization of which largely depended upon its entry into the global economic structure. Thus, China could not afford to remain
outside the realm of the WTO for too long even if that entailed making significant
changes in its economic and administrative policies and functioning.

Domestic Implications

The accession has obliged China to honour the WTO understanding that
national judicial systems act in compliance with international treaty obligations and
norms, thereby, by implication, overriding Chinese domestic judicial decisions and
practice.\(^\text{12}\) China has also become exposed to the WTO dispute system and to the
courts. The membership of the WTO has increased competition within China and
will further erode central control over commercial policy. It has committed China to
abide by the requirements of transparency, national treatment and non-
discrimination. It has also led to numerous policy changes including significant
reductions in tariffs, removal of no tariff barriers and quotas, the opening up of its
service sector, further protection of intellectual property rights and the elimination of
many barriers to trade in agricultural products.\(^\text{13}\) The membership has also required
greater political openness and accountability. Moreover, under the bilateral
agreement negotiated in November 1999 with the US, China made asymmetrical
concessions in favour of the US.\(^\text{14}\) Thus, Chinese economist Gao Shangquan
distinguished four challenges that the WTO membership poses for China: a
challenge to the competitiveness of some Chinese industries and companies on the
world market; a challenge to China’s administrative system; a challenge to China’s
industrial structure; and a challenge to the Chinese government’s macroeconomic
control (Xinhua News Agency, 7 March 2000).

China’s adaptation to the WTO has very significant impact on domestic
policy-making as it signaled the shift from socialist market economy to more
liberalized trade practices (Song 2007: personal interview). China’s implementation
of its accession agreement hinges upon the reform in the functioning of the domestic

\(^{12}\) See Potter, Pitman B., *The Chinese Legal System: Globalization and Local Culture* (London:
Routledge, 2001)

\(^{13}\) For a detailed analysis of post-WTO changes in China, see Mooney, Paul, ‘Post-WTO Shocks for
China’s Farmers’, http://www.Chinaonline.com/issues/WTO/NewsArchives/cs-
protected/2000/january/C00011721.asp Jan 17, 2000

\(^{14}\) See ‘Barehevsky on China WTO, Congressional Trade Status Vote’, February 29, 2000, available
at http://Chinaonline.com/commentary
institutions. In recent times, the government has taken some significant steps to institutionalize the state structure (Zweig 2002:264). Moreover, in the sensitive field of financial reforms, China has to tread cautiously and ensure that proper balance exists between its WTO obligations and the rights of domestic enterprises (Song 2007: personal interview). Thus, the dichotomy that exists between the Chinese developmental model and the Anglo-American model raises questions about the effectiveness of such reforms. Margaret Meriwether Pearson has enunciated three parameters for examining the functioning of the regulatory structures in China: organizational structure, bureaucratic autonomy, and regulatory autonomy (Pearson 2004:575-579). In the late 90s, there were efforts to rationalize and streamline the bureaucracy, reorganize the ministries and to make the bureaucratic ideology more pro-competition and pro-consumer. Bureaucratic capacity has also been the subject of reforms- reforms that clearly influence the type of regulatory system that is emerging. The Working Party on China’s Accession to the WTO has flagged this subject as a crucial variable in China’s implementation of the agreement. As with the streamlining the bureaucratic structure, upgrading the quality of the bureaucratic personnel was also a central feature of the re reform process (started by Deng Xiaoping), and much was accomplished in terms of raising the educational standards and institutional expertise (Pearson 2004:577). However, the bureaucracy in China still remains under the strict control of the political establishment and is less autonomous which affects the policy-making and continues to be a cause for concern. Finally, while the WTO reflects the Anglo-American model, aiming largely at promoting outcomes through the institutionalization of principles of transparency and ‘neutral’ adjudication of conflicts through its dispute-settlement mechanism, the Chinese developmental model, on the other hand, fosters a higher degree of intervention in markets, and promotion of industries that can compete internationally shielding those considered socially important even if not domestically or internationally competitive (Pearson 2004:578). Despite many functional shortcomings, the Western countries believe that the membership of WTO would force China to adopt ‘international norms’ of trade that have been established over the years. This belief is enshrined in the official US statements on
the impact of WTO entry on China, summarized by an official White House statement of March 2000:

China’s accession agreement will deepen and help to lock in market reforms- and empower those in China’s leadership who want their country to move further and faster toward economic freedom. In opening China’s telecommunications market, including to Internet and satellite services, the agreement will expose the Chinese people to information, ideas, and debate from around the world. And China’s accession to the WTO will help strengthen the rule of law in China and increase the likelihood that it will play by global rules (White House Office of the Press Secretary 2000).  

The EU Trade Commissioner Pascal Lamy also made the same point in his speech in Beijing in October 2000: “It can only lock in and deepen market reforms, empowering those in the leadership who support further and faster moves towards economic freedom” (WTO 2000: http://www.ecd.org.cn/WTO/1023.htm). In addition to the specific concessions on tariffs, subsidies and other things, WTO membership entails a fundamental shift in the legal basis of the Chinese political economy. The National People’s Congress (NPC) is charged with the task of making China’s domestic legislation that would confirm to the WTO stipulations, and in many respects it is the Chinese legal structure that requires some immediate reforms in the wake of the WTO entry. As Yong and Fei-ling put it:

International enmeshment facilitates China’s social learning in terms of the values, norms and principles, and rules of the international system and adds China’s stakes in the existing institutions and order. China’s worldview and definition of national interests can be transformed toward greater compatibility with the rest of the world through transnational activities and networks, including tourism, academic and cultural exchanges, and commercial ties (Yong and Fei-ling 1999:7).

While separating the state from the party is still an uphill task in China, it is expected that the WTO membership should further strengthen the role of state organs, particularly legal institutions of the NPC vis-à-vis those of the party (Breslin 2003:228).

There are reports that the WTO accession has created social strains and precipitated the already crippling unemployment problem (Greathead 2003:27-29). There are apprehensions that it would lead to massive displacement of peasants from their occupation and subsequently to inequalities in the society (New York Times, 29 July 2003). For this reason, in the context of China's entry into the WTO on December 11, the World Bank's December 2001 report, "China and the Knowledge Economy", advised China to create a minimum of 100 million jobs within the next ten years, particularly in service sector, for people moving out of agriculture and those laid off by the state-owned enterprises (Kent 2004:531). As China implements the WTO rules, it will continue to face a number of problems: problems of accommodating the WTO regulations in a non-market economy; problems of cultural mismatch between China and other WTO members, leading to differences in interpretation of rules; the inadequacy of Chinese domestic financial and legal institutions; interference from and non-compliance of, China's regional authorities; general problems of domestic implementation; and the danger of excessive disputation with the Western member countries of the WTO (Kent 2004:530-533). Moreover, the WTO membership demands that China should rapidly move towards establishing a full-fledged and competitive market economy by effecting necessary changes, which also is a serious challenge for the leadership. However, the move towards a competitive market economy would have its share of social and political problems even so for a country like China where the socio-political apparatus is not yet tuned to a market economy environment. 'Entry into WTO for China will mean just not economic transition but at least significant social transition as well' (Bhaumik 2001:78-83). Nevertheless, China's entry into the WTO would enhance the competitiveness of its economy and create great opportunities for its domestic industries.

**International Implications**

After becoming a member of the WTO, China has actively participated in the Ministerial Conferences and vociferously raised demands on behalf of the developing countries. In fact, it has assumed leadership along with India, Brazil, and South Africa in bargaining with the developed countries for the protection of vital economic interests of the developing countries in the world trade body. At the Fifth
WTO Ministerial Conference in Cancun, the head of the Chinese delegation, Lu Fuyuan called on developed countries to make substantial concessions on agricultural issue. He insisted that:

the current (agricultural) statement cannot be broken nor can the overall negotiations be pushed forward unless developed members with high subsidy, high support and high support and high tariffs make major and substantial reduction commitments... we hold that NAMA negotiations should aim to substantially reduce tariff peaks and eliminate tariff escalation and should observe the principle of ‘less than full reciprocity’ to genuinely safeguard the interests of members whose economy are at the level of developing countries (Xinhua News Agency, 11 September 2003)

China championing the cause of the developing countries consistently demands significant reductions and concessions by the developed countries to ensure fair and undistorted trade among the member countries of the WTO. It emphasizes that:

...overall consideration should be given to the specific situation of various members, especially the practical difficulty and stand of the developing members. Priority should be given to solving problems the developing members are concerned about. In the meantime, problems of special concern of new members should be effectively solved. Only in this way will it be possible to reflect the WTO principle of fairness and justice... (Xinhua News Agency, 16 September 2003).

There have been many analyses of the political, economic and social impact of China's entry into the WTO and also the impact on its legal regimes. But is China really interested in fully implementing all the obligations and commitments that it has undertaken? Some analysts like Youngjin Zhang believe that unless China discards the instrumentalist approach and internalizes (WTO related) rules, laws, institutions and principles, it can not be expected to perform its

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role as a responsible member of the WTO. In recent years, China had initiated many reform programs towards making its economic system compatible with the WTO standards and to enhance the transparency of the system. The reductions of tariffs and the overhaul of the trade regime have been undertaken in response to demands by other WTO members for China to comply with WTO standards in its trading practice. Long Youngtu, China’s chief negotiator at the WTO clearly articulated how the membership of the WTO would affect the future course of China’s economic reform programme. China’s bid to obtain its membership in the global trade club is made, in his words, “not just for the sake of joining the WTO. More importantly, it is to push forward economic reform and opening and facilitate the economic structuring and the establishment of a system of market economy so that China can participate fully in the economic globalization” (Beijing Youth Daily, 26 March 2001:2).

However, despite China’s best efforts it is felt that instrumental and strategic reasoning have so far largely motivated these reforms and changing economic behaviour in China and it is not yet ready to embrace the broad normative basis of the world trading system to facilitate the future reform. The detailed and rigid schedule that has been imposed on China’s trade liberalization subsequent to its entry into the WTO can be construed as a kind of vote of lack of confidence in China’s commitment and changing economic practice and behaviour. Only adaptive behaviour entirely based upon strategic and instrumental reasoning in the absence of norm-induced behaviour still remains a worrying factor for the other members of the WTO (Youngjin 2003:699-714). Zhang argues that instead of selective adaptation of principles, institutions and rules embedded in the world economy, China should foster and create a new normative basis for such behavioural and systematic changes in order to realize the goal of full integration into the global economic structure. ‘Internalization in this sense is an indispensable and revolutionary constituent of the internationalization of the Chinese economy’ (Zhang 2003:702).

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The Internalization Debate

China joined the WTO when a vigorous debate was going on regarding the country’s participation in ‘globalization’. Apparently, Deng Xiaoping’s theoretical formulations have very often been used to legitimize Chinese attempts to protect Chinese sovereignty and at the same time to secure an improved standard of living through participation in investment and in the technological opportunities of economic globalization. China’s WTO entry can be seen as a sign of further ‘openness’ towards the process of global economic integration. The issue of ‘openness’ as it connects with globalization reflects the changing policy perspective on state sovereignty and free trade. Whereas in the past there was a preference merely for ‘economic cooperation’ between sovereign states, there is now a new enthusiasm for the building of free trade zones and adopting more competitive trade policies. Though the adaptation to economic globalization requires China’s participation in a new international politics supporting a wider-based and revisionist conception of the ‘rules of the game’ in international trade and investment, China seems all prepared to take that extra step forward towards its full participation in the important global regimes.

While there were some dissenting voices within China pointing towards the significant costs that the country has to bear being a member of the WTO, the WTO entry was portrayed as a new stage in China’s ‘opening’ to the world by the political leadership. The entry was internally legitimized as an opportunity for further domestic economic development, but it has not finally resolved the domestic issue of sovereignty. One key motive for entry was in fact sovereign equality itself, as explained, for example in the following editorial opinion of a newspaper:

China’s ‘WTO entry’ also signifies that China no longer has to stand on the sidelines while other countries draw up regulations to which it has to adapt. On the contrary, it can totally participate in and draw up rules of competition for the new century in negotiations through a multilateral trading system and become the
beneficiary of certain relevant regulations to ensure China’s equal entry into the world market.\textsuperscript{19}

China had to make significant concessions mostly in terms of policy autonomy to enter into the WTO. These were accepted primarily as a means for advancing specific state interests related to economic modernization. Indeed, Beijing’s logic was that the protection of China’s sovereignty required further reform and opening, as expressed in the following statement by Jiang:

Modern technology is advancing rapidly and industrial and economic restructuring on a global scale is speeding up. Competition based on overall national strength will increasingly become the leading factor deciding a country’s future and destiny. We are facing rare development opportunities as well as grim challenges. Only by constantly improving our economic strength, national defense strength, and national cohesiveness, can we remain invincible amidst increasingly intensive international competition and truly safeguard our national sovereignty and national pride (FBIS-CHI-1999-0817).

Thus, China’s adaptation to WTO is slow and gradual. The record of its compliance with the WTO commitments and obligations has not fully satisfied the Western countries. The absence of rule of law and non-separation of powers among the three organs of the state are fundamental causes for concern. However, the Chinese policy makers and experts defend China’s position vigorously. According to Prof Song Song, China’s adaptation to the WTO is not at all passive. In fact, as a new member of the WTO, “China has already presented in the international economic stage with active posture” (Song 2003:172). China actively participates in multilateral negotiations (in WTO), applies the WTO rules and regulations properly and is very much committed to comply with all the WTO obligations (Song 2003:164). China’s full adaptation to the WTO is a long haul. Problem areas remain but there are certain positives which should be highlighted. The WTO principles and concepts such as non-discrimination, transparency, due process of law and judicial review have gained wide acceptance in China as the norms for good governance in a modern society. The public’s appeal to WTO norms often goes beyond the technical scope for their application; a notable example was the popular demand for national treatment for domestic enterprises. There is also tendency among academics to

\textsuperscript{19} ‘WWP Editorial on Significance of integrating PRC Economy with World through WTO’, available at http://wnc.fedworld.gov/egibin/reliev
construe WTO concepts liberally and expansively so as to give them meaning in a larger political and constitutional context. As WTO principles and concepts require a normative force in China, their overall impact on the construction of ‘rule of law’ may well be more profound in the long run than the WTO – conforming changes at the legislative and institutional level.

China does not adapt to WTO passively. Prof. Song Hong has enumerated three notable aspects of China’s active involvement in the WTO eventually leading towards effective integration into the global political economy.

1) China has taken part in multilateral negotiations in WTO actively. China has sent 20-odd negotiation teams to Geneva successively to take part in negotiations about new issues. They made known China’s position. In the new-round agriculture negotiations, China put forward its own plan to ask developed countries eliminate export subsidy and reduce high tariff.

2) China makes use of WTO rules, or regulations to defend China’s rights. China begins to settle economic and trade disputes according to WTO rules, which include response to export dumping charge, import anti-dumping, safe guard measures and technical barriers, etc. For instance, in September 2002, MOFTEC promulgated temporary regulations for foreign trade barrier investigation to defend legitimate rights of domestic enterprises. In this year, China has some conflicts with leading trade partners. With Japan, there was agriculture dispute; with the United States, there were trade disputes in steel and textile issues; with the European Union, there were disputes in color TV and lighter. China is trying to learn and apply WTO regulations in practice.

3) With the understanding and acquaintance of WTO rules, China would carry out commitments and defend rights more actively. China would make great efforts to keep balance between implementing commitments and enjoying rights, complying with and utilizing the rules, opening and protecting markets, and expanding openness to the
outside world and defending national economic security (Song 2003:176).

China's adaptation to global regimes is evident in the fact that under Washington's pressure, it made major concessions in order to get a seat at the WTO table. In effect, China's 'open door' approach to economic globalization remains rooted in domestic policy designed to accelerate China's economic growth and development. In order to remain competitive in the global economic system, China has no option but to adopt the global norms and conventions of trade and investment. What is new in this is the positive calculation that China can, through hopefully adroit participation in multilateralism, seize the benefits of cooperation while minimizing the harmful dimensions of foreign economic dominance of the international trading system (Keith 2004:507-523). The relationship between China and WTO, especially with major members, in essence, is to establish on the basis of pragmatism. This relationship provides effective contacts for both parties with the purpose of economic interest-orientation. Global regimes have become the new instrument for the achievement of domestic economic goals. The WTO is compared to an 'economic United Nations' where state sovereignty deals with the rules of the international trading game. "While the status quo powers might have at least implicit misgivings about Chinese revisionist support of multipolarity, the new Chinese focus on the importance of involvement in multilateral rule-making might be welcomed as a positive element in China's adaptation as a world power" (Keith 2004:512).

The accession to WTO was an inevitable choice for China to enhance the level of institutional engagement at the global level and expedite the process of economic development at the domestic level. China's embrace of the WTO-based global trade regime and norms of free trade signaled its determination to play a greater role in the regime-centric international system even if that entailed making difficult policy adjustments. Taking into account the initial years of participation in the WTO, there is no substantial evidence of any serious violation of rules by China and no rejection of the norms and structures of the regime. China is rather trying hard to comply with the WTO regulations balancing the global requirements with the domestic economic imperatives.