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Indira Gurbaxani and Sonja Oppen\*

## How Tensions between Specific Chinese and American Interests Affect China's Entry into the WTO

*The USA regularly stresses that it is in favour of China's admission to the World Trade Organization, given the country's growing network of international relations and its increasing political and economic significance. China's own political leadership has been driving home its demand to be readmitted to the GATT (WTO) since as long ago as July 1986. Yet in spite of the apparent concurrence of interests the two countries convey to the outside world, China's entry negotiations have not yielded any evidence of a positive outcome.*

Since the People's Republic of China embarked on its reform policies in 1978, it has had one of the world's most dynamic economies. By 1996, the country's national income was growing at approx. 10% per annum, its exports at an annual rate of about 16% and imports at about 15%. By that time, China ranked as the world's tenth largest trading economy. Yet at the same time its per capita income level of approx. \$550 means the People's Republic of China is still one of the poorest countries in the world.<sup>1</sup> The USA stresses at frequent intervals that it strongly favours China's admission to the WTO, given the country's growing network of international relations and its increasing political and economic significance. The Chinese leadership has been emphatically demanding the country's readmission to the General Agreement on Tariffs and Trade, now the WTO, since July 1986.<sup>2</sup> Yet in spite of the apparent concurrence of interests the two countries convey to the outside world, China's entry negotiations have not yielded any evidence of a positive outcome. The USA in particular has failed to provide China with any real support for its entry bid. The basic question this raises is whether that support has been withheld because China has been failing to meet the WTO's basic criteria as to how a modern economy should be managed, or whether it is rather a case of the two sides being

unable to settle on an "entry fee" that would be acceptable to both of them.

When investigating activities concerned with foreign trade, it is always important to bear in mind how closely economic and political interests are intertwined. That is to say, the strategies pursued in foreign trade and any trade legislation introduced will normally be part of a political agenda. This enquiry will address both the political and economic levels of argument, and will use both for its analytical framework. In seeking to clarify the background to the Sino-American conflict, the article will look first at China's political and economic interests and its success to date in liberalizing its foreign trade. This will then be contrasted with the American position. Once the specific interests on either side have been outlined, the article will conclude by assessing the status quo in China's bid to join the WTO, and the role that the USA is playing.

<sup>1</sup> Estimated from figures provided in Zhongguo Tongji Nianjian 1997, pp. 42 & 588, and in China aktuell, November 1997, pp. 1151/27.

<sup>2</sup> The Republic of China was among the 23 founding nations that signed the General Agreement on Tariffs and Trade (GATT) on 30th October 1947. "When China became the People's Republic of China in October, 1949, it was unable to assume its seat in the GATT. The Republic of China [present-day Taiwan – authors' note] occupied the seat until 1950, when it withdrew. China [i.e., the People's Republic] considers the Republic of China's withdrawal invalid." Gretchen Harders-Chen: China MFN. A Reaffirmation of Tradition or Regulatory Reform?, in: Minnesota Journal of Global Trade, Vol. 5 (1996), p. 381. The 1994 GATT and WTO are used synonymously in this article when not explicitly defined otherwise.

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## China's Application to Join the WTO

In June 1998, the WTO had a total membership of 132 countries. However, given that a number of important economies such as China, Russia and Vietnam do not belong to the organization, there is still a considerable way to go in attaining a liberalized system of world trade. Integrating these "outsiders" would mean more than just an overall gain in economic welfare: the intensified international trading relations would also offer the chance of stabilizing the political balance of power.

Even after many years of entry negotiations, the WTO has so far only granted observer status to the People's Republic of China. In practice, the main opponent of Chinese entry has been the USA. To put the American stance to the test, we shall be analysing objectives, the entry conditions demanded, and the steps towards liberalization that China has so far taken.

### China's Political Objectives

In a process that began with its "Reform and Open Door" policies announced in December 1978 and was intensified following the collapse of the socialist systems in Central and Eastern Europe, China has pressed hard to be granted a place in the world's community of nations which it deems worthy of its own importance. It does hold a permanent seat on the UN Security Council, and it has been a member of the IMF and the World Bank since 1980. Yet China's integration into the world economy could not be considered complete until it gained membership of the WTO.

WTO membership would place China on an equal footing as a political partner, and would also give it a proper voice in shaping the system of world trade. China's leaders have stressed on numerous occasions the importance of their country's participating actively in a future world trading order. Jiang Zemin proclaimed during the 15th Party Congress in September 1997 that, "The unjust and irrational old international economic order is still infringing upon the interests of developing countries."<sup>3</sup> The Chinese government likes to regard itself as an advocate of the

developing countries, and promises that their position would be strengthened if it could obtain WTO membership.

This stance is also closely associated with a rejection of any one, dominant superpower, whether in the general political arena or in the field of trade policy. To illustrate, the "Shanghai Communiqué" issued by China and the USA back in 1974 includes a statement by the leadership that, "All nations, big or small, should be equal; ... China ... opposes hegemony and power politics of any kind."<sup>4</sup> In particular, the dominant position occupied by the USA is now attacked increasingly openly by China's leaders. The former prime minister, Li Peng, said in February 1998, "We could never agree to the US claiming 'leadership over the world'.<sup>5</sup> China is calling for a multipolar world which would also include a significant role for itself.

### Economic Objectives

The "Four Modernizations" introduced by the Communist Party of China in 1978 constituted a comprehensive reform programme with ambitious growth objectives. The successive transition from a centrally planned to a "socialist market" economy called for substantial structural adjustment throughout the Chinese economy. Although the country only has 5 million people officially registered as unemployed, the central government does confirm that another 12 million employees in state-owned enterprises are "on leave", and that the hidden underemployment figure is at least another 54 million.<sup>6</sup> On top of that, approximately 200 million peasant farmers need to transfer into non-agricultural work to reduce the level of rural underemployment.<sup>7</sup> Sustained high economic growth offers the only way for the Chinese leadership to attain its long-term objective of full employment. The 9th Five-Year Plan currently in operation (1996-2000) envisages 8% annual growth in national income.<sup>8</sup>

The middle classes who are "keen to consume" number just 65 million people in China (or 5% of the total population),<sup>9</sup> which means it would be impossible to attain the government's growth objectives on

<sup>3</sup> Jiang Zemin: Hold High the Great Banner of Deng Xiaoping Theory for an All-Round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century, in: Beijing Review, Vol. 40 (1997), No. 40, p. 33.

<sup>4</sup> Internet document: <http://www.jue.org/jue/chinanews/docs/shanghai.com.html>

<sup>5</sup> Li Accuses "Meddlesome" US of Wanting to Rule the World, in: Hong Kong Standard (Internet edition), 5th February 1998.

<sup>6</sup> Cf. Zhongguo Tongji Nianjian 1996, p. 114; ACFTU Insurance Working Party: Enquiry into personnel released and waiting for work, the redeployment situation, and proposals (original title in Chinese), in: Jingji Yanjiu Cankao, 1st February 1996, p. 7; Tom Korsi and Agatha Ngai: 20m Jobs to Go by 2000 in China's State Sector, in: South China Morning Post (Internet edition), 7th May 1997.

<sup>7</sup> Cf. Zhang Genming: Analysis and forecasts on the employment situation in 1996 (original title in Chinese), in: Jingji Gongzuozhe Xuexi Ziliao, Nos. 12-13, 1996, p. 68.

<sup>8</sup> Cf. Margot Schüller: Chinas ökonomische Erfolge und soziale Herausforderungen, in: China aktuell, August 1996, p. 765.

the back of the domestic economy alone. Consequently, China has to rely on an export-led growth strategy. The plan is for the country's foreign trade volume to grow by 8-11% annually by the year 2000, by which time it should be in the order of \$200 billion.<sup>10</sup> Thus China sees its admission to WTO membership as a guarantee that trading partners will not respond to its export strategy by resorting to (neo)protectionist counter-measures. WTO membership would confer "most-favoured-nation" (MFN) status upon the People's Republic of China.

That would put an end to the annual bilateral negotiations on trading terms which many counterpart governments, particularly the USA, have been using as a lever to push for better observance of human rights by China. WTO membership would

substantially cut back such coupling of international and domestic issues, which the Chinese government rejects as "interference in its internal affairs". On the other side of the coin, once the need for annual renegotiation was obviated there would be a reduction in uncertainty and in information costs for trading partners, which ought to further boost the overall volume of China's trade.

Given that China regularly faces charges of dumping from various trading partners, it believes that WTO membership would put an end to unilateral sanctions. When trade conflicts arise, Articles XXII and XXIII of the GATT provide for arbitration procedures to be instituted. Whereas the original, 1947 version of the GATT adopted a "positive consensus" to trade conflicts, the Marrakesh Protocol incorporated into the GATT in 1994 brought a "negative consensus" arbitration approach into operation.

To sum up, once it became a WTO member the People's Republic of China's export prospects would be likely to improve substantially thanks to diminished competitive distortions and to an overall improvement in transparency in the country's trade relations.

<sup>9</sup> Cf. Reinhard Geissbauer and H. Siemen: Direktinvestitionen in China, Indien und Indonesien, Bonn 1996, p. 19.

<sup>10</sup> Hans H. Bass: Chinas Aussenhandelspolitik zwischen Exportförderung und Importhemmnissen, in: Hans H. Bass and Karl Wohlgemuth (eds.): China in der Weltwirtschaft, Mitteilungen des Instituts für Asienkunde (= reports by the Institute of Asian Studies), No. 271, Hamburg 1996, p. 32.

Gert Brunekreeft

## Coordination and Competition in the Electricity Pool of England & Wales

In 1990, the electricity supply industry in England and Wales has been deregulated in a most progressive way, attracting academic, practical and political attention worldwide. The experiences in England and Wales will be of major importance for reform prospects in other countries.

In this work the author stresses central coordination, the development of competition and their mutual interaction as the critical aspects of the deregulation. These aspects are extensively described, analysed and assessed from a micro-economic perspective, attempting to answer the question whether the introduction of competition has been successful. From the new structure as set out in England and Wales important lessons can be learned for other countries currently restructuring the electricity supply industry. The Dutch electricity sector, where major reform is planned, is brought as a case-study to illustrate these lessons.

This work, whose author is appointed at the university of Freiburg (Germany), is of special interest for politicians, sector executives and economists, who are concerned with electricity deregulation.

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However, from a static point of view the growth in volume would not actually improve the terms of trade. In view of the underlying pattern of China's exports, the terms of trade would in fact deteriorate in the first instance, as the elasticity of demand for labour-intensive, mass-market products is low, and an expansion in volume terms would inevitably depress world market prices. Viewed from a dynamic perspective, the import of advanced technologies and Western management expertise would have the opposite effect on China's terms of trade. Since embarking on the reform programme in 1978, the Chinese government has made it clear that a key objective of the country's trade policy is to gain access to modern technology, in order to close the technology gap relative to the industrial nations in the medium to long term. At present though, national export controls which are at times restrictive (e.g. the COCOM list) mean that China hardly has free access to various industrial goods produced by a number of its trading partners (particularly the USA). The increased integration into the world economy that WTO membership would entail might improve China's access to a number of key technologies. As a result of the ensuing modernization of China's industry the profile of its exports could shift in favour of higher-quality industrial products, thus allowing the terms of trade to pick up again as export prices increased. In 1997, 87% of China's exports (in volume terms) were manufactured goods.<sup>11</sup>

### China's View of the WTO Entry Conditions

The conditions on which WTO entry is granted are based both on the institutional form of management of a country's economy and on its overall level of development. China defines its present-day system as a "socialist market economy" and therefore rejects the notion of having to join the WTO as a planned-economy country. Quite a degree of controversy attaches to this classification. The EU did not officially cease classifying China as a planned-economy country until December 1997, and indeed the USA still upholds the classification, as exemplified by the "Jackson-Vanik amendment" (see below).

As for its level of economic development, the People's Republic of China demands to be recognized as a developing country, which would allow it to benefit from the special terms granted by the clauses written into Part IV of the GATT in 1967. Not only do

these allow longer transitional periods, both for reducing tariffs and non-tariff barriers and for opening up markets as stipulated in the 1994 GATT, but developing countries also benefit from special terms in the field of intellectual property (governed by TRIPS – Trade-Related aspects of Intellectual Property rights) and services (the General Agreement on Trade in Services). Although developing countries are still required to initiate appropriate liberalization measures, they are entitled to longer transitional periods than other member countries.

If it can qualify for these exemptions, the People's Republic of China believes it will be relieved of some of the pressure upon it to liberalize its foreign trade. That would give it leeway to adapt the pace and extent of liberalization to that of the reforms still in progress in the domestic economy. The Chinese leadership believes this is a key prerequisite for upholding the country's social consensus, while at the same time allowing it to retain control over the economy's development. Ever since it began the reform programme, the Chinese government has regarded both of these as key aspects in safeguarding its claim to the country's political leadership. With that in mind, the government does not introduce any reforms in external economic relations which might jeopardize its ability to control the domestic economic system. As Ms Wu Yi, China's foreign trade minister, pointed out in February 1998, "Any country's opening-up and economic liberalization process should be set in accordance with its economic development level."<sup>12</sup> Looked at from China's perspective, therefore, the recognition of its status as a developing country is of key significance.

On the other hand, the Chinese government's demand that the country be granted developing country status is evidently proving to be one of the key points of conflict in the entry negotiations. The USA in particular absolutely rejects China's claims in this respect, in view of the country's large volume of trade and the prospect of dynamic economic development in the years ahead. In these respects, the People's Republic of China does not appear to fit in with the typical image of a developing country. Yet as things currently stand, China only occupies 108th position out of the 174 countries listed in the United Nations' prosperity rankings. If the World Bank's current definition of the poverty line is used (per capita consumption of just \$1 per day), there are still 300

<sup>11</sup> Cf. China's Trade Surplus Jumps, in: Singapore Business Times (Internet edition), 15th December 1997.

<sup>12</sup> Quoted in: Gao Wei: Country Has Its Timetable in Gradual Opening-up, in: China Daily (Internet edition), 17th February 1998.

million people living below that line in the People's Republic of China, or about 25% of the total population; that definitely puts it in the developing-country category as defined by the World Bank, the United Nations and the Asian Development Bank.<sup>13</sup> The WTO itself does not cite any definite criteria as to when a country ought to be classed as a developing country, but it does normally accept the definitions given by the United Nations.

### Preparatory Work by China

While negotiating for WTO entry, the People's Republic of China has taken a number of steps to liberalize economic processes. Article 15 of the country's Foreign Trade Law (adopted by the Standing Committee of the Eighth National People's Congress on 12th May 1994) establishes the "principle of the free import and export of goods and technologies" unless a specific law determines otherwise. On the other hand, Article 16 does permit restrictions on imports or exports in principle.<sup>14</sup> Article 9, meanwhile, only allows licensed enterprises to conduct foreign trade. Compared with the twelve centrally controlled organizations which had sole responsibility for foreign trade at the time the reform process began, there were 7,000 licensed enterprises by 1996. Manufacturing enterprises with foreign equity owners are also permitted to trade directly with businesses in other countries.<sup>15</sup> Nevertheless, the country's foreign trading relations cannot yet be said to be free.

The average tariff rates imposed on imports and exports by the People's Republic of China have fallen from 43.2% in 1992 to 17% today, a level about five percentage points higher than the average for developing countries.<sup>16</sup> President Jiang Zemin has announced that the average tariff rate will be reduced

to 15% by the year 2000, thus meeting the WTO's requirements for developing countries. A further tariff reduction to 10% is planned by 2005.<sup>17</sup> However, the overall pattern of tariffs in China is such that some specific tariffs are still high, with considerable differentials existing from one product to another. For reasons of development strategy, the areas where import tariffs have been eased the most include major raw materials, capital goods and energy sources, while the up-and-coming domestic consumer goods industry is still protected by prohibitive customs duties. In particular, the automobile industry is protected by tariffs of 110-150%.<sup>18</sup> Not only that, but cars are also among the products subject to import quotas. However, Chinese negotiators did agree in August 1997 that import quotas on cars and minibuses would be phased out over an eight-year period, and that the quotas would also be increased by 8% and 12% respectively.<sup>19</sup> If the country is admitted into the WTO, the intention is to abolish all import licensing within five years.

The main point criticized by Western industrial nations is the restrictive policy on automobile imports, but this objection fails to consider the fact that the Chinese car industry is dominated by joint ventures with foreign companies. The latter are the real beneficiaries of the present import quota system.

One of the barriers to imports is posed by inspection requirements. Since 1997, capital goods imported from abroad such as boilers, pressure vessels, piping, cables or turbine units all require inspection certificates that have to be issued by Chinese inspectors in the country of origin, the cost of which is carried by the supplier company.<sup>20</sup> Import licences are required for imported goods such as grain, vegetable oils, wine, fizzy drinks, and for any chemicals that could be used to produce narcotics or chemical weapons.<sup>21</sup>

Specific economic plans for exports were abolished in 1991, and only 15% of the country's exports in 1992 were subject to quotas or licences. On the other

<sup>13</sup> Cf. Deutscher Industrie- und Handelstag (DIHT): Direktinvestitionen in China. Ein Handbuch für den Mittelstand, Shanghai 1997, pp. 32 f.; Jan Hung-ji: The PRC's Bid to Enter the GATT/WTO, in: Issues & Studies, Vol. 33, No. 6, 1997, pp. 44 f.

<sup>14</sup> Article 16 envisages restrictions on imports in the following cases: (1) to safeguard national security or the public interest, (2) to establish or accelerate the establishment of a particular domestic industry, (3) if needed for any form of agricultural or fisheries produce, (4) to maintain the country's international financial status and safeguard balance-of-payments equilibrium, or (5) to comply with international treaties or agreements to which China is a party. Restrictions on exports may be applied: (1) to safeguard national security or the public interest, (2) to cope with domestic shortages in supply or to effectively protect exhaustible domestic resources, (3) if the market capacity of the importing country or region is limited, (4) to comply with international treaties or agreements to which China is a party. For further information, see: Aussenhandelsgesetz der VR China, in: Robert Heuser (ed.): Wirtschaftsreform und Gesetzgebung in der Volksrepublik China. Texte und Kommentare, Mitteilungen des Instituts für Asienkunde (see also note 10), No. 264, Hamburg 1996, p. 378.

<sup>15</sup> Cf. Thomas G. Moore: China as a Latecomer: Towards a Global Logic of the Open Policy, in: Journal of Contemporary China, Vol. 5 (1996), No. 12, p. 190.

<sup>16</sup> Cf. Deutscher Industrie- und Handelstag (DIHT), op. cit., pp. 210 ff.

<sup>17</sup> Chinas Markt weiterhin schwer zugänglich, in: Frankfurter Allgemeine Zeitung, No. 16, 20th January 1998, p. 11.

<sup>18</sup> Cf. Hans Bass, op. cit., pp. 41 f.

<sup>19</sup> Cf. China aktuell, August 1997, p. 748.

<sup>20</sup> Cf. Chinas Markt weiterhin schwer zugänglich, loc. cit., p. 11.

<sup>21</sup> Cf. DIHT, op. cit., pp. 210 ff.

hand, the export capabilities of Chinese enterprises (especially the state-owned ones) are boosted by numerous price subsidies on a variety of their inputs, by interest rate subsidies, and by export promotion measures. Yet some of the most dynamic exporting industries (toys, clothing, sports goods etc.) have had relatively little assistance from export promotion schemes.<sup>22</sup> At the same time, Sino-foreign joint ventures in the Special Economic Zones and Development Zones benefit from tax holidays and concessions while contributing towards export quotas. China's customs authorities chiefly grant tariff reductions and exemptions to enterprises in the special economic zones, free ports or high-tech development zones, and to cover imports made by joint ventures or by direct subsidiaries of foreign companies. In a bid to accelerate the catching-up process in the country's technological development, the People's Republic of China has opened the door to its markets for most Western businesses by allowing them to set up production facilities before Chinese firms had had any chance to establish a dominant market position of their own. Thus about two thirds of China's export boom in the early 1990s was attributable to "Foreign Invested Enterprises", which still accounted for 46.8% of foreign trade volume in the period January-November 1996.<sup>23</sup>

So one can safely say that the People's Republic of China has made a variety of the concessions required for admission into the WTO, and signalled its willingness to liberalize some more. The next section will examine whether the Americans have misgivings relating to China's economic system, or whether it is more a question of them having political and economic motives for being dissatisfied with the size of the "entry fee" China has offered to pay.

### The USA's Position

The American attitude to China's wish to join the WTO is best understood from a historical perspective. The United States was the only nation to come out of World War II both economically and politically stronger. It was not until later, in the 1970s and '80s, that it temporarily lost its position of hegemony, as a result of two oil crises, the collapse of the Bretton Woods monetary system, and tougher competition

from Japanese and European suppliers. Nowadays, following the collapse of the Soviet Union, the USA is again regarded as the politically dominant world power. The current strength of the US dollar also feeds the self-confidence of a country that is once again laying claim to supremacy on the world stage.

### Political Objectives

The 1997 Economic Report of the President devotes a chapter to "American Leadership in the Emerging Global Economy". The USA defines this leadership role in an all-embracing sense, with four cornerstones: political, economic, technological, and security-related.<sup>24</sup> Naturally, there are close inter-relationships among these four fields. Hence the USA is inclined to regard an up-and-coming economic power such as China as a threat to its hegemony. The US government also takes a sceptical view of any reservations voiced by the Chinese as to the American claim to global leadership, as it also does of integrating China into an American-dominated world order. Indeed a study commissioned by the Pentagon even warns of China's potential willingness to go to war with the USA.<sup>25</sup>

Inevitably, economic relations between the currently strongest economic power and the world's fastest growing economy are heavily coloured by the two parties' political interests in influencing the present and future balance of power to their own advantage. The USA cannot accept a potential weakening of its own competitive position by a new rival in the shape of China. An added American fear is that China's accession to the WTO would strengthen the position of the developing countries.

Any government acting rationally, if it expects a shift in the balance of power to take place in future, will naturally use its present political and economic superiority to shape the future regulatory environment to suit its own objectives. That instils trade policy with greater importance as an instrument of power politics. This is why the USA exerts influence on the rules of the economic game in China when the two countries engage in bilateral negotiations. The fact that the USA has so far rejected any transition towards multilateral negotiations with the People's Republic of China under the WTO's umbrella – despite official state-

<sup>22</sup> Cf. Thomas G. Moore, op. cit., pp. 191 & 196.

<sup>23</sup> Ibid., p. 192.

<sup>24</sup> Cf. Rolf Hasse and Thomas Koch: Vereinigte Staaten: Wirtschaftsmacht in gefährdeter Spitzenposition? Entwicklungslinien und Rückwirkungen, in: Dieter Cassel (ed.): Wirtschaftssysteme im Umbruch, Munich 1990, p. 363.

<sup>25</sup> Michael Pillsbury: Dangerous Chinese Perceptions. The Implications for the Department of Defense, cited in: China has Dangerously Wrong Perceptions about US. Report, in: Singapore Business Times (Internet edition), 9th March 1998.

ments to the contrary – suggests that the US government currently believes the bilateral route offers a better chance of furthering its interests.

### Economic Objectives

Attaining and maintaining international competitiveness is a key objective for any economy. In its own assessment, the United States has now built up an economic strength it has not had for three decades. A major indicator of competitiveness is the employment situation. The US economy has generated 14 million jobs since the start of the Clinton administration in 1993, 3.2 million of them in 1997 alone.<sup>26</sup> Keeping or creating more new jobs will remain a central aim of economic policy in time to come. In the wake of globalization, which has meant the migration of production facilities and increasing international competition, American labour unions are demanding the protection of domestic jobs. Cheap imports from China are an especially big target for protests. One thing they do not take account of is the fact that there are already 170,000 American jobs that depend on exports to China.<sup>27</sup>

A further indicator of an economy's international competitiveness is its trade balance. The USA's trade deficit with China has grown steadily from \$2.8 billion in 1987 to \$49.7 billion in 1997, which has led the US government to pursue an aggressive trade policy aimed at reducing the deficit.<sup>28</sup>

The Americans chiefly attribute their bilateral trade deficit to unfair trade practices, a lack of transparency and the insufficient opening of China's markets. Accordingly, players on the American side regard not only bilateral initiatives and agreements but also the current WTO entry negotiations as a suitable means of leveraging open the Chinese market to let in US products.

China's government counters American accusations by suggesting that the USA is itself responsible for exacerbating the deficit. The high technology items sought by the Chinese, such as nuclear power technology and electronic components, are still subject to strict American export restrictions. In its

White Paper on the Sino-US Trade Balance, the State Council of the People's Republic states, "It makes no sense for the United States to play up its trade deficit against China on the one hand, and continue its export control on the other."<sup>29</sup> The criticism on China's part is backed up by the fact that China's total balance of trade has remained in deficit for many years, so the basic accusation that China has been cordoning off its markets is robbed of its justification. Apart from that, more than half of the USA's 100 largest corporations now have their own presence within the People's Republic of China.<sup>30</sup>

### The Jackson-Vanik Amendment

The Clinton administration certainly recognizes that China has done a good deal to put its house in order to qualify for WTO entry, yet it does not yet believe the conditions have been met for the country's accession "on commercially viable terms". Another problem is that the US Trade Representative, Charlene Barshefsky, fears the old trade barriers will actually be replaced by others of a different kind.<sup>31</sup>

The United States' present trade policy towards China is ultimately based on Title IV of the 1974 Trade Act, which excludes "non-market economies" from qualifying for "unconditional" most-favoured-nation treatment. However, Sections 402 and 409 of the trade Act, known as the "Jackson-Vanik amendment", do provide for such countries to be granted "conditional MFN" status, under which US imports from them would be treated as per "column 1 of the Harmonized Tariff Schedule of the U.S. Trade Act".

The Jackson-Vanik amendment, which also came into force in 1974, was originally designed as a foreign-policy instrument to apply pressure on the USSR: "The idea was to withhold MFN treatment until the Soviet Union lifted restrictions on Jewish emigration."<sup>32</sup> In later years, the amendment was

<sup>26</sup> Cf. Ron Gluckman: The Americanization of China. Forget Politics. U.S. Culture has Invaded the Mainland and the Chinese will Never be the Same, in: Asiaweek (Internet edition), 4th July 1997.

<sup>27</sup> Cf. Gretchen Harders-Chen, op. cit., p. 408. In another context, the Chinese dissident Wei Jingsheng has remarked of the Communist Party of China's credibility that, "They can make any promises and they can go back on any promises." Simon Beck: Don't Be Fooled by Beijing, Wei Warns Clinton, in: South China Morning Post (Internet edition), 10th December 1997.

<sup>28</sup> Hugh Corbett: Issues in the Accession of China to the WTO System, in: Journal of Northeast Asian Studies, Vol. XV (1996), No. 3, p.28. It is interesting to see the stance taken by influential Jewish organizations in the USA, which have described the coupling of MFN to human rights questions, particularly allowing Jewish emigration, as counter-productive. On this, see: Wendell L. Willkie II: Why does MFN Dominate America's China Policy?, in: James R. Lilley and Wendell L. Willkie II (eds.): Beyond MFN. Trade with China and American Interests, Washington D.C. 1994, p. 122.

<sup>29</sup> Carola Kaps: Zwei Drittel aller Amerikaner arbeiten, in: Frankfurter Allgemeine Zeitung, No. 9, 12th January 1998, p. 17.

<sup>30</sup> Cf. China aktuell, May 1997, p. 419.

<sup>31</sup> Cf. Verschlechterte Handelsbilanz der USA, in: Neue Zürcher Zeitung, No. 42, 20th February 1997, p. 9; US Department of Commerce.

<sup>32</sup> Information Office of the State Council of the People's Republic of China: On Sino-US Trade Balance, in: Beijing Review, Vol. 40 (1997), No. 14, p. VIII.



made applicable to all communist-bloc countries. Since that time, the US government has only granted conditional MFN status to "non-market economies" in one of two ways:

- ☐ if the countries concerned fulfil the requirements of the Jackson-Vanik amendment (this currently applies to Russia and Mongolia);
- ☐ if the President has suspended the amendment's application in an annual review (as provided for in Section 402) (this currently applies to the People's Republic of China).

For obvious reasons, the USA does not have any interest in securing a freer policy on emigration from the People's Republic of China. Indeed, the country's leader Deng Xiaoping commented during a visit by President Carter in 1979 that, "If you want me to release ten million Chinese to come to the United States, I'd be glad to do so."<sup>33</sup> In reality, the key factors underlying China's conditional MFN status have been US national security and trade interests on the one hand and human rights requirements on the other, though President Clinton ceased to apply the latter from 1994 onwards. According to the Clinton administration's Under-Secretary for Economic and Business Affairs, Stuart Eizenstat, the key question

when deciding whether to grant China MFN status is ultimately how American interests can best be served.

At present, MFN status is only withheld from a very small group of countries such as Libya, Iraq, and North Korea. Thus one needs to look a little further for an explanation of the annual ritual of the discussion, often quite emotionally charged, as to whether China should be granted its MFN status. The fact that China still has not completed its economic transition cannot be the answer, when countries such as Bulgaria and Mongolia have completed their WTO entry negotiations. Human rights violations in the People's Republic of China were already a controversial issue even before the "Tian'anmen Square incident" of 1989. Given that the USA has upheld trading relations with Nigeria and various other countries which, though it is aware of what happens there, it has not accused of any human rights violations, one can only conclude that the US government's "anti-China" campaigns have been politically and economically motivated. Even China's involvement in the arms trade would not appear to be a sufficient reason for "special treatment", considering the activities of other trading partners such as Syria. In other words, the justifications used for the American government's policy towards China patently lack consistency.

Moreover, the withdrawal and renewal of MFN status in an annual cycle of negotiations can no longer

<sup>33</sup> Ibid.

D.C. van Hoof

## Dictionary for International Trade in Five Languages

Anyone wishing to be successful on international markets which are becoming increasingly global, needs not only encyclopedic knowledge of the relevant rules and regulations but must have within fingertip reach as well a considerable volume of technical terms which has snowballed in recent years. The Dictionary for International Trade in Five Languages makes available to users 25,000 English language technical terms and their equivalents in German, French, Spanish and Dutch and, in so doing, makes it easier to understand foreign language documents and correspondence with foreign business partners and authorities. In the choice of terminology, the standard trade terms known as "incoterms" have been drawn upon to the same extent as European and international agreements, treaties and suchlike important documents. The insertion of technical terms such as these into their broader context makes them more easy to understand and thus easier on the user.

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be regarded as a credible sanction to punish China for political errors, since the costs to the American public would be too high if the sanction were ever made to bite. Duties applied to Chinese imports would increase from 6% to 44% on average. According to an analysis made by the World Bank, US consumers would have needed to spend \$14 billion more in 1994 if they had substituted other countries' products for those they have been buying from China.<sup>34</sup>

The application of the Jackson-Vanik amendment also has negative feedback effects for China's WTO entry negotiations. Article XIII of the Marrakesh Protocol permits the USA to continue to withhold permanent MFN status from China even after its possible admission to the WTO. In other words, this would leave the status quo of the countries' bilateral trade relations unchanged, so in effect the use of the Jackson-Vanik amendment weakens the American bargaining position in the WTO admission debate.

Against the backdrop of the US policy towards China sketched out above, the next part of this article takes a look at which contentious trade issues are currently causing problems in Sino-American relations and delaying the People's Republic of China's admission to the WTO.

### Contentious Trade Issues

A more fundamental examination of the Sino-American trade conflict in the fields of intellectual property and the textile industry is a useful way of throwing more light on the stance adopted by the USA. There are two reasons why these areas are of special interest. Firstly, these are fields in which discussions of trade liberalization during the Uruguay Round were either completely new or were addressed with a new vigour, which means they are arousing considerable international attention and that there is a relatively keen need for action. Secondly, they are both areas in which the USA has been a prime mover in seeking new rules, and in which it is now calling for more liberalization beyond the terms of the GATT.

### Intellectual Property Rights

"Intellectual property rights as a means of promoting and protecting innovation have gained more and more importance in the world market just as industrial nations have had to concede their previously unchallenged predominance, due to competition

either among one another or from competitive industries in certain developing countries."<sup>35</sup> In the light of the political and economic rivalry already identified between the USA and the People's Republic of China, it is easy to understand why the USA so doggedly insists on the protection of intellectual property in its bilateral negotiations with China – much more rigorously than it did, for example, in its dealings with Japan, South Korea and Taiwan. To boost respect for intellectual property rights, the USA applied pressure on the Chinese government in 1989 by threatening to impose punitive tariffs on certain of China's export products.

The Chinese government has so far put its signature to a number of international agreements on the protection of intellectual property, and has enacted domestic legislation accordingly. Patent law in the People's Republic of China is based around the Paris Convention for the Protection of Industrial Property, which it signed in 1985, and the Patent Cooperation Treaty which it joined in 1993. The Chinese Government also ratified the Madrid Agreement Concerning the International Registration of Marks (i.e. trademarks etc.) in 1989 and the Nice Agreement, on international classification for trademark registration purposes, followed in 1994. The country enacted its own first trademark law on 1st July 1993. Copyright is protected by the Berne Convention for the Protection of Literary and Artistic Works and the World Copyright Treaty, both of which the People's Republic signed in 1992, and the national copyright legislation passed in 1991.<sup>36</sup> As a result of all this, the Chinese system of laws and regulations substantially corresponds to the TRIPS Agreement. In addition, China has given its assurance that, if admitted to WTO membership, it would adapt its national legislation to harmonize it completely with the TRIPS Agreement. Yet even if it implements all these measures, the possibility of US sanctions cannot be ruled out. The "Special 301" rules (a supplement added in 1988 to Section 301 of the U.S. Trade Act of 1974) allow the USA to set its own standards with regard to the protection of intellectual property: "A country may be identified as denying adequate and effective IPR [= intellectual property rights] protection, even if it is in compliance with the TRIPS Agreement." As the Americans see it, their Section 301 legislation

<sup>34</sup> Cf. Information Office of the State Council of the People's Republic of China, op. cit., p. II.

<sup>35</sup> Peter-Tobias Stoll: Die WTO. Neue Welthandelsorganisation, neue Welthandelsordnung. Ergebnisse der Uruguay-Runde des GATT, in: Zeitschrift für Ausländisches öffentliches Recht und Völkerrecht, Vol. 54 (1994), pp. 312 f. (unofficial translation).

<sup>36</sup> Cf. DIHT, op. cit, pp. 240 ff.

is in accordance with the WTO's regulations. However, the WTO's Trade Policy Review Body has come to a different conclusion on this issue. It complains that Section 301 is a manifestation of a continuing tendency towards unilateralism on the USA's part. In the same context, the body criticizes the large number of bilateral trade agreements the USA has negotiated.

The American software industry claims it suffered losses of \$2.3 billion in 1995 attributable to copyright piracy by Chinese operators, and has called for tougher implementation of the law by the Chinese authorities. Product piracy also generates costs for the Chinese economy. The fact that intellectual property rights have so far been inadequately protected impedes the development of a young software industry because its own products are (or would be) uncompetitive against the cheap copies of foreign-made programs. For example, copies of Microsoft Word are available on the black market for just 15 yuan (RMB), as against the 480 yuan that comparable products by Chinese suppliers would cost. In December 1997, the ratio of illegal to legal copies sold on the market was placed at 10:1.<sup>37</sup> As a result, the Chinese software industry has also joined in the call for more effective measures to combat piracy.

Taking both the criticisms voiced by US organizations and its own interests into account, China has gone beyond establishing the legislative foundations and taken concrete steps to protect intellectual property rights, also announcing more measures to come. For example, the Chinese government closed down six illegal manufacturing facilities for CDs and cassettes in the February 1995-1997 period, also destroying 0.8 million cassettes. More than 40 unlicensed CD factories were closed down in 1997.<sup>38</sup> The fact that 40-50 CD manufacturing facilities were also relocated to Hong Kong<sup>39</sup> also underlines the rigour of these measures and the signal they were intended to send to others. It should be borne in mind that the Hong Kong special administrative zone, as a signatory to the GATT, has been a WTO member since its establishment on 1st January 1995.

### Trade in Textiles

In order to liberalize the trade in textiles and clothing, it was agreed in the Uruguay Round that the Multi-Fibre Agreement (MFA) will be phased out in 4 stages by 1st July 2005. The end of the MFA is especially important from the developing countries' point of view, as it is particularly in labour-intensive, standardized industries such as this that they have the potential to gain a greater share of the world market. The countries likely to gain the most trade from this change are the People's Republic of China and other developing countries in South-East Asia. Conversely, industrial countries with textile manufacturing sectors of their own fear that once textile trade is fully covered by the GATT they will come under growing competitive pressure from developing countries, forcing them to undertake painful structural adjustment. "However, the credibility of the liberalization plan is jeopardized ... by the fact that industrial countries facing severe competitive pressure from imports could resort to other protectionist instruments, such as the greater use of anti-dumping petitions, as a substitute for MFA restrictions."<sup>40</sup>

The Chinese government is often accused of dumping in the textiles sector, especially by the USA, because state-owned enterprises benefit from tax holidays, export quotas and finance on favourable terms. Except in 1996, China's textiles industry has invariably been its most important exporting sector; its sales in 1997 came to \$46 billion, about 50% of which were for export. That means that about three quarters of China's trade surplus is contributed by the textiles and clothing sector.<sup>41</sup> On the other hand, it should be borne in mind that approximately 45% of the industry's exports are currently produced by foreign firms.

Given the significance of the textiles sector in China, it is easy to understand why the US government has endeavoured to conclude bilateral agreements with its Chinese counterpart covering textiles trade, too. Such agreements were concluded in both 1994 and 1997, to lower China's import tariffs on American textiles and lower US import quotas on imports from China. The first tariff reductions came

<sup>37</sup> Cf. Lana Wong: King of Programs Declares It's His Word That Counts, in: South China Morning Post (Internet edition), 11th December 1997.

<sup>38</sup> Cf. Helen Johnstone: Demand Keeps Pirates Afloat on Newer Shores, in: South China Morning Post (Internet edition), 11th December 1997.

<sup>39</sup> Cf. Better than the Real Thing, in: The Economist (Internet edition), 23rd January 1998.

<sup>40</sup> Dieter Bender: Die Entwicklungsländer in der neuen Welthandelsorganisation, in: Michael Frenkel and Dieter Bender (eds.): GATT und neue Welthandelsordnung. Globale und regionale Auswirkungen, Wiesbaden 1996, p. 131.

<sup>41</sup> In 1997, state-owned textile manufacturing enterprises received financial support worth \$5.2 billion. Cf. Kym Anderson: On the Complexities of China's WTO Accession, in: The World Economy, Vol. 20, No. 6 (September 1997), p. 765; Xu Binglan: Textiles Get More Rebate Points, in: China Daily, 23rd February 1998.

into force on 1st October 1997. Once China became a member of the WTO, there would no longer be any chance of influencing its market share via bilateral agreements. On the other hand, the "Agreement on Textiles and Clothing" agreed in the Uruguay Round does contain a protective clause (Article 6) which allows importing countries to take selective measures to protect their domestic industries for a further four years beyond the 2005 termination date for the MFA.<sup>42</sup>

It will be clear from above that the US textile and garment industries will enjoy extensive protection at least in the short and medium terms. Moreover, the USA itself has so far been rather tentative in liberalizing its own textiles trade. Trading partners complain that the US government has not yet honoured its obligations under the first phase of the Uruguay Round textile agreement.

As both of these examples show, the USA's trade policy towards China chiefly takes the form of bilateral agreements which the Americans trust will provide them with improved access to China's markets. Given that it was actually the USA that took the initiative in including these two fields in the Uruguay Round, the country's present policy towards the People's Republic of China patently runs counter to the fundamental principles it has itself laid down. The Americans are able to use their still considerably superior political and economic muscle to help them in asserting their interests.

### Conclusions

The points discussed here have shown that the People's Republic of China's wish to join the World Trade Organization is being delayed due to the divergence between its own interests and those of the USA. The backdrop to this conflict is provided by a shift in the balance of political and economic power between the two countries that is likely to occur if the Chinese economy can achieve stable growth in the long term.

American criticisms are levelled at an insufficient opening of China's markets to US products. There can be no denying that China's trade policy is protectionist in nature, and that its rate of protection is still above the average for developing countries. However, the Chinese government has implemented various liberalization steps within a short period of time that bear witness to its desire to meet the WTO's requirements. Pointing out China's protectionist

stance, US policymakers are endeavouring to open up the country's markets for American products via bilateral agreements. The US government justifies this approach on the grounds that it believes bilateral agreements also offer the chance of accelerating multilateral integration. It is indeed true, in the examples we have examined, that unilateral pressure speeded up trade liberalization on China's part. As far as the overall economic transition is concerned, China appears to be on the right track. Yet in spite of the swift progress the country is making on liberalization when compared to other developing countries, the USA has kept up its resistance to China's admission to the WTO even to this day. Secretary of Commerce William Daley stated in March 1998, "China is 'nowhere near' ready for entry into the WTO."<sup>43</sup>

What, then, are the American government's motives for preferring bilateral agreements to a multilateral policy under the auspices of the WTO? To begin with, one must assume that, on a basis of purely economic rationality, the USA will not switch from bilateral to multilateral agreements until the latter hold the prospect of greater returns. Given that its preference for the bilateral route means the USA will be unable to make use of the arbitration procedures offered within the WTO, one must further assume that it would not expect to gain any net benefit by calling upon the WTO dispute settlement bodies to examine Sino-American trade conflicts. On the other hand, it is important to consider sufficiently the possibility that the USA's main motive might be a rejection of the "entry fee" China has offered in terms of the liberalization measures it is undertaking. The American economist Robert Lawrence has put forward the proposition that the US government wishes to make the best of what it sees as the last opportunity before China enters the WTO to impose substantial demands upon it.<sup>44</sup> The danger in this approach, bearing in mind that the People's Republic of China has not completed its transition process and also faces major problems in its domestic economy, is that it may find the demands impossible to fulfil. It is ultimately conceivable that China will be less willing to liberalize and to take other steps if it feels harried by US policy. The Chinese Minister of Trade Wu Yi has threatened that China might simply decide to stay outside the WTO, as its economy was evidently developing well enough without its having to become a member.

<sup>42</sup> Michael Frenkel and Karin Radeck: Die Beschlüsse der Uruguay-Runde: Hintergrund, Inhalt und Bewertung, in: Michael Frenkel and Dieter Bender (eds.), op. cit., p. 30.

<sup>43</sup> Cf. US: China not Ready for WTO, in: Singapore Business Times (Internet edition), 4th March 1998.

<sup>44</sup> Quoted from: Xu Binglan: US Told to be Reasonable on China's WTO Entry Bid, in: China Daily (Internet edition), 12th March 1998.