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Progress, Perils, and Prospects

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CHINA AND THE WTO: PROGRESS, PERILS, AND PROSPECTS

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PETER K. YU[1]

In November 2001, member states of the World Trade Organization ("WTO") approved the proposal to admit China to the international trading body in the Doha Ministerial Conference.[2] After fifteen years of exhaustive negotiations, China formally became the 143rd member of the WTO on December 11, 2001. To reflect on this event and to explore its ramifications, this panel brings together a wide variety of experts. We have optimists and pessimists; inside experts and outside specialists; academics, government officials, and legal practitioners.

When commentators analyze the effects of China's entry into the WTO, they usually fall into one of two camps—the optimists or the pessimists—or a hybrid between the two, which considers China's entry a "double-edged sword."[3]

The optimists maintain that China's entry will benefit not only China, but also the global community. As they explain, the international trading system can ill afford to have a player as major as China not playing by the rules of the game. Involving China in the WTO and obtaining deadlines for compliance therefore is preferable to having China outside the organization with no deadlines whatsoever. China also may be more inclined to adhere to those international norms that it helps to shape.

Moreover, according to the optimists, China's WTO membership will benefit its local people by lowering prices through competition, by enabling a more efficient operation of the Chinese economy, and by integrating the country into the global community. It also will create new jobs, attract foreign investment, acquire human talents, and provide the capital needed for the country's modernization efforts.

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[1] Professor Yu's remarks were revised from Peter K. Yu, *The Ramifications of China's Entry into the WTO: Will the Global Community Benefit?*, FINDLAW'S WRIT: LEGAL COMMENTARY, Dec. 4, 2001, *at* http://writ.news.findlaw.com/commentary/20011204_yu.html.

[2] Paul Blustein & Clay Chandler, *WTO Approves China's Entry*, WASH. POST, Nov. 11, 2001, at A47; Joseph Kahn, *World Trade Organization Admits China, Amid Doubts*, N.Y. TIMES, Nov. 11, 2001, at 1A.

[3] For discussions of China's entry into the WTO, see generally GORDON G. CHANG, THE COMING COLLAPSE OF CHINA (2001); NICHOLAS R. LARDY, INTEGRATING CHINA INTO THE GLOBAL ECONOMY (2002); PETER NOLAN, CHINA AND THE GLOBAL ECONOMY: NATIONAL CHAMPIONS, INDUSTRIAL POLICY AND THE BIG BUSINESS REVOLUTION (2001); SUPACHAI PANITCHPAKDI & MARK CLIFFORD, CHINA AND THE WTO: CHANGING CHINA, CHANGING WORLD TRADE (2002).

In addition, the optimists say, China's entry will promote the rule of law in the country, undercut the power of the state to control the lives of its citizens, and accelerate China's transition from a command economy to a market economy. The WTO membership also will help modernize the accounting, banking, legal, telecommunications, and transportation systems, while at the same time reducing corruption, favoritism, and local protectionism.

By contrast, the pessimists contend that China's accession to the WTO may disrupt the global trading system. As they point out, China has a poor record of fulfilling international obligations. And if China's rogue state mentality continues despite its joining the WTO, its actions eventually may result in the collapse of the organization.

After all, the WTO is already under siege—facing severe criticism by less developed countries and heightened media scrutiny since the violent protests in Seattle and Genoa. China's irresponsible behavior, the pessimists say, could cause other member states to lose confidence in the already-fragile global trading system.

Whether one belongs to the optimists' or the pessimists' camp will depend on one's confidence in China's ability to honor promises and to fulfill treaty obligations.

Pessimists generally cite two basic reasons to explain why China will fail to abide by the WTO rules. First, China might prefer to compete unfairly against other WTO members by free-riding on the benefits of the global trading system. Second, China's socio-economic problems may be so severe that the Chinese leaders will not be able to honor their promises even if they want to do so. Given Chinese leadership's strong desire to minimize friction with other WTO member states, the latter explanation is more likely than the former to account for China's future reckless behavior.

Since the reopening of China in the late 1970s, China's economy has been growing at an enviable average annual rate of about seven percent. Unfortunately, this rapid economic growth has brought about serious domestic problems. These problems include decreasing control by the state, decentralization of the central government, significant losses suffered by inefficient state-owned enterprises, the widening gap between the rich and the poor and between the urban and rural areas, massive urban migration, widespread unemployment, corruption, and growing unrest in both the cities and the countryside.

With the opening of China's market to foreign competition, these problems will likely be exacerbated. For example, the

streamlining, restructuring, and closure of state-owned enterprises may lead to massive layoffs while automation and high-technology equipment may also contribute to a socially disruptive transformation of labor-intensive industries. As a result, the Chinese economy will undergo major structural changes, and tens of millions of farmers and workers may lose their jobs over the next five years.

This daunting array of domestic problems will become even more important in light of the recent retirement of third-generation Chinese leaders, including Jiang Zemin, Zhu Rongji, and Li Peng,[4] which could spark an internal battle over leadership succession. To gain political capital, conservative hardliners may use the domestic problems caused by China's entry into the WTO to discredit their reformist counterparts. Meanwhile, reformist leaders may take a cautious approach and put off difficult and risky policies until they can consolidate their political power. Under such a political climate, reforms—including those that are needed for China's transition efforts—will likely slow down, if they continue at all.

Furthermore, the WTO membership may bring about changes that redefine the way people conduct business, achieve success, and obtain power in China. While foreign businesspeople are generally frustrated by the lack of rules and certainty in China's business environment, many local Chinese entrepreneurs have been very successful and are able to master the rules of the game, conquer the bureaucratic maze, and develop *guanxi* (personal connections) which enable them to prosper in society.

However, with the introduction of new rules required under the WTO, these people may have to play a different game—a game that is new, unfamiliar, and very different from the one they have mastered. Even worse, many of them may have difficulty in adjusting to the new system and thus will suffer from reduced income, lower career satisfaction, and deteriorating living conditions. As a result, many of those who have prospered under the existing system will find the new system unappealing, or even irritating. Dissatisfied by the new system, the public may seriously question the legitimacy of the reforms—and perhaps the Chinese Communist Party's leadership—and social unrest might become widespread.

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[4] Erik Eckholm, *China's President Steps Down to Make Way for New Generation*, N.Y. TIMES, Nov. 14, 2002, at A10; Erik Eckholm, *Change in China: The Transition; China Carries Out an Orderly Shift of Its Leadership*, N.Y. TIMES, Nov. 15, 2002, at A1.

Finally, to provide social control and curtail instability in light of the challenges posed by China's accession to the WTO, the Chinese authorities may adopt harsh policies and draconian measures that undermine civil liberties and human rights. The authorities also may tighten their information control policy to minimize criticism of the government and to reduce channels through which people can voice their grievances.

In the next five years, China will face significant challenges as it makes its transition to a new regime under the WTO. Combined with existing socio-economic problems, these challenges will make the transitional period critical.

If, despite these challenges, China can remain stable and overcome the short-term hardships created by its entry into the WTO, joining the organization will benefit the country. China's WTO membership also will benefit the international community, for it will likely induce China to become a team player in that community.

However, if China fails to cope with its upcoming challenges, the country may suffer setbacks that have the potential to erase the progress China has made in the past two decades. Under this scenario, the conservative leaders may replace their reformist counterparts, and China may retreat into a new kind of isolationism.

In addition, the Chinese may blame Western developed countries and the international global trading system for the country's failure to modernize. There may also emerge new forms of nationalism and xenophobia that are more radical than those we saw shortly after the 1999 U.S. bombing of China's embassy in Belgrade or after the 2001 standoff over the collision between a Chinese jet fighter and a U.S. reconnaissance plane.

In sum, the future prospects of China's entry into the WTO remain uncertain, and many questions have yet to be answered. Will China be a team player or a rogue state? Will China keep its promises, comply with deadlines, and fulfill its treaty obligations? Will China play an active role in future WTO rounds of talks? Will China take an active stance in setting the new international trade agenda? Will China's WTO membership give Asian countries greater bargaining power within the international trading body? Will China create tension within the WTO by alienating those less developed countries that have to compete with China for foreign direct investment and export markets? There are no easy answers to these questions. It depends on whom you ask.

GORDON G. CHANG

Is China's economy changing? Yes, of course. But is it reforming? Well, that is not so clear. And is China booming?

There is no question that China changed, reformed, and boomed up until five years ago. But what about the last half decade? This is where many China watchers get it wrong. They see all the progress in the first part of the reform era, and they just assume that it has continued after the death of Deng Xiaoping in 1997.

So we really need to take a look at what is happening today. The change that we see today is more the product of creative destruction than conscious reform. And when the central government does act, we often see retreat, not advance. Structural economic reform is running aground in the People's Republic of China.

During the era of Deng Xiaoping, the economy of China was transformed from a socialist command economy to a mixed economy. Deng believed in what I call the Nike school of economic restructuring: his motto was, "Just Do It." And as a result, China's economy grew extremely fast, perhaps the fastest in the world and maybe even the fastest in world history. Change was exhilarating.

In the past half decade, however, the story has been different. We have heard a lot of talk of reform and we have even seen some change, but there has been relatively little progress. Under Jiang Zemin and Hu Jintao, gradualism has been the rule, and every once in a while we have even seen backsliding, as if that were an option.

Backsliding is not an option because China is already in the WTO, and in the next few years the worst effects of accession will be felt. Generally speaking, the country could benefit from being in the global trading body. But that is only in the long term after structural reform has had an opportunity to take effect. In the meantime there is going to be pain. There are going to be more business failures, more layoffs, and more social unrest. And that is inevitable, because China is trying to cure more than five decades of economic mismanagement with the shock therapy of the WTO.

Let us get specific about the WTO. The best way to do that is to look at the facts. Mao Zedong, for all his faults, left China with a solvent banking system. There were no non-performing loans. But during the reform era, and especially in the past decade, China's banks

have become sick, perhaps the sickest in the world. How in the world did that happen?

The state's first priority was to fix state-owned enterprises, so grants from the central government were replaced with loans from state banks. In theory, this was sound—make the wheezing state enterprises self-sufficient. But in practice, this was a disaster. State enterprises knew they did not have to pay back the state banks, so they did not. And in an economic system divorced from economic reality, the banks became gift-givers. State banks vacuumed up cash from hundreds of millions of individual depositors and disgorged it onto hundreds of thousands of state-owned enterprises.

The big news in China's banking system is not how weak the banks are today. It is the ongoing creation of new bad loans. Communist Party and central government officials see the state banks as a "secondary budget," in other words, a convenient source of funding. So the state banks fund state enterprises and they even fund the state itself. A large portion of the central government's finances are covered by the proceeds of sovereign treasury issues, and state banks obediently buy these obligations as they come to the market. When the state banks run out of cash because of their purchases of central government debt, the central bank tides them over with interim funding. So money is circulating in a closed system with many parts of the state financing each other at the same time.

Because this appalling state of affairs could not last indefinitely, Beijing formed four asset management companies ("AMCs") to absorb a portion of the bad debt of the four largest state banks. The AMC plan, however, is itself failing, and the AMCs now need bailouts.

Beijing is merely passing the problem from one group of state entities to another: from the state-owned enterprises to the state-owned banks and from the state-owned banks to the state-owned AMCs. The aftershocks of a banking crisis will last years, even if a government acts decisively. When it does not, the crisis will persist indefinitely. And that appears to be China's fate because there is no apparent end to the problems. This dreadful state of affairs was caused by the reformers, and now they have run out of ideas as to what to do.

Here is the final irony. The AMCs are weakening the central bank because they are not paying interest to it. Now there is talk that the central bank itself needs a bailout. This situation would be comical if the implications for China were not so serious.

In China, we have seen the central government devote substantial time and resources to fixing the state banks, but let us not mistake activity for progress or the talk of reform for reform itself. It is certainly not beyond central government officials to waste even more time. But they cannot afford to do that because the WTO provides a hard deadline for structural reform. Sometime between now and 2007, when the foreign banks get full access to domestic markets, Beijing must come up with something like a half-trillion U.S. dollars to fix the state banks. If it does not, the next crisis in the banking system could be of historic proportions.

The central government is talking about privatization for the state banks in the next few years, but given their massive bad loan problem and other factors, it is unrealistic to think that foreign investors will be interested. Will domestic investors buy? Perhaps, but to answer that question we should first look at the complicated politics of privatization in China today. And to do that, we need to examine Beijing's repeated attempts to fund the nation's bankrupt social welfare system through stock sales. But first, we need a little background.

We did not have to wait too long after WTO accession to see massive worker protests, which rocked China from one end to the other but especially in the troubled northeast and especially in the cities of Daqing and Liaoyang. In March 2002 these cities saw protests of 30,000, 40,000, and perhaps 50,000 workers. But what brought the laborers out into the streets?

The central government essentially forced state-owned enterprises to shed tens of millions of workers in the run-up to WTO accession without providing an adequate social safety net.

The failure to do so typifies the breakdown of reform in China today. Senior leaders in Beijing are so proud of the national social security system that they put together in the middle of the last decade. But this program is problematic. On the one hand, it exists mostly on paper, and on the other hand, it is in tatters and on the verge of bankruptcy. Beijing will have to come up with one trillion U.S. dollars, give or take several hundred billion dollars, in order to fund pensions and other social welfare benefits. In order to do this, central government technocrats devised a plan that should have worked: selling more stock of state-owned enterprises. The state controls a majority of the shares of the companies that are listed on China's two domestic exchanges, one in Shanghai and the other in Shenzhen. State

media tells us the percentage of state-owned stock of these companies is as high as sixty-five to seventy percent.

In June 2001, the central government announced its plan to fund pensions and severance benefits. Those enterprises listing their shares for the first time would have to put a small portion of the proceeds of the listings into the National Social Security Fund. Immediately upon the announcement of the plan, the markets sank. They lost about thirty percent of their value, about US$181 billion in market capitalization. Existing investors were worried that a flood of new shares would depress the value of what they already owned. So, in October of that year the central government withdrew the plan, and the markets came right back up.

Although reversing course did a lot for share prices, it did nothing to solve the underlying problems of funding pensions and severance benefits. In January 2002, the central government announced another plan, and again the markets sank, and again the central government withdrew its plan, and the markets came back up. This time, the officials waited only two days to withdraw the plan.

The insolvency of the system does not seem to be worrying the technocrats in Beijing because in June 2002 they announced a permanent abandonment of their plan to fund the social security system. Since then there has been no apparent progress towards repairing the system. If the technocrats in the Chinese capital cannot fund their social security system through stock sales when funding is critical to maintaining social stability, how can they recapitalize the banks in the same way?

The country is either going to have a funded social security system and solvent banks or it is going to have a new government. The choice is entirely in Beijing's hands, and so far it cannot come up with the right answer.

These days we know that China cannot come up with any answers, and the reason is that the country is involved in an important political transition as the third generation of leaders makes way for the fourth. Almost all the top posts in the Communist Party and in the central government changed hands recently. In the ludicrous political system that Beijing maintains, very little gets done during periods of political transition. Because Jiang Zemin does not want to leave the scene, the current transition could last years.

In this time of political transition the leaders prefer the easy solutions. What they like to do is spend money, hoping to get by from one day to the next without fixing the real problems.

What do I mean? I think we need to go behind the headlines to see what actually has happened. It is true that the vital signs of the economy are improving. In 2001, growth of gross domestic product was 7.3 percent. In 2002, it was eight percent. If central government predictions are correct, and of course they always are, we are going to see at least 8.5 percent growth for 2003.

Now, that looks great, but that is not the real story. The real story is what we are not seeing. We are not seeing the end, or even the tapering-off, of the government's program of massive fiscal stimulus. Sure, China has vibrant private and export sectors basically concentrated along the coast, but the rest of the economy, the state sector, is ailing, or at best, stagnant.

China started its program of government stimulus in 1998 and has promised an end to it many times. The program, however, continues today. In the third quarter of 2003 fixed asset investment increased by an astounding 30.5 percent. The acceleration of pump priming means one thing: the economy is not able to grow on its own.

China watchers today are involved in this very lively debate about whether the central government has been doctoring its numbers. But we do not really need to know whether it has, and we do not even really need to know what the underlying growth rate is. What we need to know is what we can see with our own eyes: China is just buying low quality growth. The central government accounts for more than two-thirds of investment in the country, and that is alarming by any standard. Central government spending is inefficient: fiscal stimulus is increasing more than three times faster than the economy. In other words, they are destroying money in the Chinese capital today.

So we have to ask ourselves a simple question: What is going to happen when the central government can no longer afford its program of fiscal stimulus?

Even at this late date, central government leaders cannot figure out what to do. The system that we see is losing the ability to change itself from within.

On the surface, the problems of the People's Republic appear to be economic, yet the real problem is the political system, which does not allow the implementation of even the obvious solutions. And

in this period of political transition, the paralysis will be even more apparent.

Today we see that central government leaders have no exit strategy. They continue with policies they know do not work because they cannot afford the long-term solutions. A half-decade ago, they had real choices. Today, the leaders do not. They are running out of room to maneuver, and they are running out of time.

JEROME A. COHEN

I think today's overall slogan should be "Let a Hundred Flowers Bloom," because you will hear many different views about this important and fascinating subject. I am going to talk about the legal system and the implications of joining the WTO for China's legal system.

I gave a talk in 2001 at the U.S.-China Security Review Commission, which you can find on the Internet.[5] I think the talk is also published in Chinese in China and in English here. But let me just summarize what the requirements are for China's legal system. I am not going to talk about substance now—intellectual property protection or the treatment of different products, or even the treatment of lawyers in China—although I hope somebody will touch upon China's fulfillment of its obligation to foreign lawyers.

What I want to talk about is the institutional arrangements after the WTO. Now there are essentially three demands the WTO makes on the legal system. One is transparency. We have to do away with internal documents. They are supposed to publish all relevant regulations—not just laws and regulations, but also legal decisions and other relevant norms. And, if they are not published, you are not supposed to be bound by them. It is that important. And before they are promulgated, you are supposed to have an opportunity to comment on the proposed regulations, laws, or what have you. That is a tall order for China. I think a good deal of progress is being made toward that goal, but it is not going to be simple to meet the standard.

The second fundamental demand of the WTO is going to be hard: there should no longer be arbitrary administrative actions, such as local protectionism.

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[5] Jerome A. Cohen, Opening Statement Before the First Public Hearing of the U.S.-China Commission (June 14, 2001), *available at* http://www.uscc.gov/tescoh.htm.

Third, maybe the most difficult (and probably of most interest to lawyers), there have to be some independent institutions for reviewing challenges to administrative actions, so that if a foreign company or businessperson complains that there is arbitrary administrative action relating to, for example, the denial of a business license, there is an independent institution that will impartially review the claim that the action taken or not taken was arbitrary.

Most people assume that means there would have to be an independent judicial institution. That is not necessarily the case. In most instances, there could be a new kind of administrative agency. Even the Standing Committee of the National People's Congress might pass muster in this regard, under the law and legislation that was enacted in March 2000. But essentially, we are talking about the courts. And the Supreme Court in China wants us to talk about the courts. They do not want to yield any turf. They want to expand their turf, expand their competence, here, as in most instances.

The other night I had to give a talk about a movie many of you have seen, *Qiu Ju Da Guan Si*.[6] I had not seen that movie for a few years since it first came to the New York Film Festival. And when I saw it this time, in the light of our concern about the WTO, I saw it in a new light. That movie is really about judicial review of administrative actions. After all, there was a decision following a failed mediation by the Public Security Bureau, and Qiu Ju got to the provincial court. It is not really clear what level of court it was. It looks like it was probably a basic court that was appealed through an intermediate court. But it is clear that her lawyer was using, she did not realize, the Administrative Litigation Law, which went into effect in 1990, to get judicial review of actions taken by the Public Security Bureau.

In the 1980s, a number of separate Chinese laws provided for judicial review. In principle at least, if you did not like the determination of your tax liability, you could appeal that decision to the court. Even the Security Administration Regulations for Minor Offenses, similar to what we might call misdemeanors, provided for the kind of review that Qiu Ju actually attained in the movie. But it was not until 1990, when the Administrative Litigation Law went into effect, that China began a generalized review of administrative actions in court.

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[6] THE STORY OF QIU JU (Sony Pictures 1992).

Now, the problem is, of course: What does this mean? And what is the scope of judicial review? Under the Administrative Litigation Law, a review is very narrow in scope. Courts can review concrete, specific actions, but not so-called abstract actions. That narrows down what they can intervene in the administration for. Under the WTO, it would seem that Chinese legislation should be amended to broaden the scope of judicial review so that more and more administrative actions, whether abstract or concrete, can be reviewed.

I just came back from a couple of months in China, and my impression was that there is quite a fierce debate over this issue. Many academics, and even scholars within the Supreme Court and research apparatus, seem to think the law must be revised in accordance with the WTO to expand the jurisdiction of the courts. But the people in charge of the courts, especially the Administrative Division of the Supreme Court, do not seem very moved by this. They do not seem to think that this is one of the most important issues, despite the fact that China has been revising hundreds and hundreds of laws and regulations. They do not seem willing to recognize that some change ought to be made.

Whatever the scope of judicial review, we have to ask: Do the courts in China meet the WTO standard of requiring an independent, impartial adjudicative body to review arbitrary actions by officials? And this is where China is going to have a hard time meeting the standard, because, if you look at the courts, you have problems of competence. Those are gradually being solved by China's very quickly evolving system of legal education. But you have problems of local protectionism, and they are very, very severe, because of the way judges are appointed, promoted, paid, and fired—locally by and large.

Even the Qing Dynasty was better than this. They had centralized control of the appointment process, and they tried to limit what we now call local protectionism by not sending a magistrate to his home area and not keeping him in any place that he was assigned for more than three years. Now, you have party control, political control. And you have *guanxi*—the network of entanglements that Chinese society so prominently features—which may be the worst of all the problems. And of course corruption is a very serious problem.

Now every year, when I read the report of the President of the Supreme Court, he recognizes all these problems very, very frankly. But where he is weak is on solutions. And it is not because he lacks the brainpower or understanding. It is because he lacks the political power.

China needs real institutional reform. The question is: Will the new leadership under Hu Jintao and Wen Jiaobao give the legal system real institutional reform? Not just the kind of moderate and insignificant changes that so far have been what they are focusing on. Will they give institutional change high priority?

So far, the Party has given high priority—but not sufficient priority—to reforms of the banking systems, state or enterprise reform, taxation reform—all questions that Gordon has pointed out need to be addressed. But they do not seem to understand that, without real institutional reform creating an independent legal system, they are not going to succeed to a considerable extent in any of these other economic reforms. And China needs more foreign finances. China needs more economic cooperation. And it is being held back despite the tremendous success relative to other countries in achieving and attracting foreign investors. It is still significantly being held back by the absence of a good legal system. Now, there is the problem in China.

I am excited by the debates in the academic circles, which sometimes even involve judges and prosecutors. They are talking about the need for a revolution. They do not mean violent revolution. They mean peaceful revolution. But a revolution that really will make some significant changes in the institutional structure, particularly with respect to the legal system. Now, what has happened? I do not see in the new leadership anybody who is going to make law the kind of priority I think it deserves in Chinese life. I think those who write the securities system so far have not shown the sensitivity to the kind of considerations I am referring to.

On the other hand, we have to remember, nobody knew what Khruschchev was going to do when Khruschchev took over after Stalin died. Nobody realized he was going to try to have the Soviet Union engage in de-Stalinization. Nobody knew what Gorbachev was going to do when he became the number one honcho. And it is only when somebody achieves power at the top of the Chinese system that he may be free to say things that he did not feel he could say as number five, or four, or three, or two. But I am not optimistic that we will see that kind of institutional reform.

What we are more likely to see stimulated by the WTO is an increase in legal learning. For a while, the Chinese Supreme Court was under the impression that every judge in China had to be a WTO expert. Of course, that is impossible. In the United States, it is a rare

judge who knows anything at all about the WTO. What they have to know is how their own government's legislation and regulations have translated the WTO obligations into domestic law. And that may help the Chinese judiciary understand its needs. So I think we are going to see some more progress, but it is going to be progress around the edges, rather than fundamental legal reform.

ELIZABETH C. ECONOMY

It is really a pleasure to be part of such a distinguished panel this evening, and I do want to thank Peter for this opportunity. I am going to focus my remarks this evening on the social, bureaucratic, and environmental pressures that are confronting China as it attempts to meet its WTO obligations and take advantage of WTO opportunities.

The most obvious challenge, which Gordon has already touched on, is that China's participation in the WTO is going to exacerbate the already significant problem of the rural and urban unemployed. Foreign competition and the ongoing effort to close down, merge, and reform state-owned enterprises are expected to generate significant numbers of newly unemployed. Foreign competition in the agricultural sector, too, is going to lead to millions of displaced farmers. There is no agreement among experts as to precisely how large this impact is going to be even though official Chinese estimates are grim. The 2002 estimates of the level of unemployment in China already range from about four percent to about ten percent. Looking toward the future, the Ministry of Agriculture, for example, predicts that about twenty million people in rural areas alone will lose their jobs because of China's WTO accession. The U.S. Investment Bank Salomon Smith Barney has predicted that over the next five years, as many as forty million jobs will be lost. And over all, the State Council's Development Research Center expects unemployment to increase from the current rate of ten percent to fifteen percent because of the WTO.

Not surprisingly, China's leaders are alarmed by such statistics. As Gordon mentioned, they have already been confronting frequent large-scale protests throughout rural China and, in particular, in the urban northeast. And now they face the specter of growing social unrest. At the same time, there is a possibility that migrant workers, who already make up between twenty-five to thirty-three percent of

the population in some major cities, will come into increasing conflict with laid-off state-owned enterprise workers.

Thus far, migrant workers have integrated with relative ease into the burgeoning economies of the costal provinces, but I think we are going to see growing competition and conflict between migrant workers and state-owned enterprise workers as they compete for the same relatively low-level, low-paying positions. There was one case, for example, in Jilin Province, in which migrant workers dominated the pedicab business, but local officials, perhaps in response to a downturn in the economy, began to increase the price of the permits that the migrant workers needed to operate the pedicabs, in order to force them out and make the jobs available to local citizens. The result was significant protests by the migrant workers. In the future, I think we may see much more of this on a much larger scale.

At the same time, it is important to bear in mind that social unrest as a result of unemployment may not be tied directly to WTO accession in the minds of the laid-off workers. Han Dongfeng, China's exiled labor leader, noted that it is not that laid-off state-owned enterprise workers are opposed to the reforms themselves. Most people in China recognize that with WTO accession, with economic reform, there will be layoffs, transitions, the necessity of job retraining, etc. When workers protest, they are protesting against the corruption and the injustice and, as Gordon mentioned, the insolvency of the pension system that has been brought about by officials and local enterprise leaders basically absconding with the funds that had been set aside for retirement or unemployment assistance. As Han comments, it is not necessarily the case that protests signal opposition to reform and to China's participation in the WTO. Rather, they signal opposition to the injustice and the corruption of the system. The hope, of course, is that such social protest will put pressure on China's leadership to develop a more corruption-free system and a workable social security system.

A second difficulty that the top leadership faces in attempting to meet its WTO obligations is that of bureaucratic opposition. I think this was obvious to anyone who followed China before its accession to the WTO. There were a number of bureaucratic actors that attempted to block the Ministry of Foreign Trade and Economic Cooperation from making the concessions and obligations to which it was committing in acceding to the WTO. Now, these same bureaucracies are rising up and trying to put up bureaucratic blockades to the actual

implementation of China's WTO commitments. For example, the Ministry of Information Industries has been trying to set the radiation levels for mobile telephones at a level so high that it will effectively block competition from the European Union. The Ministry of Agriculture and the Ministry of Public Health also proposed restrictions and a restrictive permit process on the import of genetically-modified soybean products. Concern over genetically modified foods is certainly legitimate; however, the reality is that ten percent of the products made with soybeans that are on the market today in China are made with genetically-modified soybeans. The Ministry of Finance also has been attempting to establish branch capitalization rules for foreign banks that will make it very, very difficult for them to compete. Many Chinese economists and officials believe that these efforts are misguided and will only delay much needed reform and perpetuate the worst practices. However, I think that overcoming these bureaucratic impediments is going to be very difficult and it is going to require a forceful combination of pressure from multinationals, the Chinese government and foreign governments. The Ministry of Foreign Trade and Economic Cooperation was really too weak to challenge these bureaucracies in the post-accession period; it remains to be seen whether the Ministry of Commerce, which replaced the Ministry of Foreign Trade and Economic Cooperation in the 2003 administrative reforms, will be able counteract this bureaucratic game-playing.

Finally, I think that the environment, and by this I mean the natural environment, is going to pose some interesting new challenges for the Chinese government as it moves forward in implementing its WTO commitments. On the positive side, I think there are some real opportunities here to use international pressure to encourage China to make important changes. The Ministry of Foreign Trade and Economic Cooperation formed an inter-ministerial working group that included the State Environmental Protection Administration, the Ministry of Agriculture, and other interested parties, to try to figure out how to move ahead in terms of adjusting to environmental demands that are going to be placed on China by the WTO. I assume that this working group will continue under the auspices of the Ministry of Commerce. With international competition, it is likely that China will move away from grain production and intensive forestry, both of which have been very detrimental to the environment. And that is going to be a positive change. Also, Chinese produce and fish are

going to face strong scrutiny. The European Union has already rejected some poultry, shrimps, and prawns, because the Chinese government was using a prohibited antibiotic; and tea from various provinces has been banned because of pesticide use. So on the one hand, the WTO is likely to be a force for positive change in China, ensuring that its produce and other food products meet international standards. At the same time, it is likely that some of the most highly polluting and environmentally-degrading industries are going to prosper under the WTO—textiles and tin mining, for example. And it is certain that automobile use is going to skyrocket over the next five to ten years, posing a significant challenge for air quality throughout China. Moreover, as China moves away from domestic logging, it is moving rapidly into other regions, such as Burma, Africa, and South America, and exploiting forest resources there. So, there will likely be some negative trade-offs.

Since this is primarily a legal panel, let me say that WTO accession also has encouraged the review and publication of environmental laws. The State Environmental Protection Administration is now posting environmental laws on its website and asking for commentary from the public. That is a terrific change.

In general, the social, bureaucratic, and environmental challenges facing China in implementing its WTO commitments successfully are significant. But let me be a little bit more positive than Gordon, and say that I do think there is the potential for WTO accession to make some far reaching and very positive changes to the way that China does business, in the realms of both politics and economics. WTO accession will open the door for private efforts to fill societal needs and strengthen China's civil society, developing a stronger entrepreneurial class and a higher standard of living that is going to contribute, I am confident, to growing popular demand for better education, a cleaner environment, and the ability to participate more directly in the political affairs of the country. So, while there will be significant short-term stress in the economy and in the political system, over the long term, if China can make it through this critical five-year period that Gordon believes will produce collapse, I think China's accession to the WTO will contribute to transforming China in a significant and overall positive fashion.

SHARON K. HOM[7]

I am personally very honored to be part of this panel, but I am also particularly pleased that the WTO and human rights are going to be put together by a conjunction, and that I can talk about those issues together. I hope that we—those of us who are trying to bring human rights perspectives into the trade arena—fare better than those in China who answered the call to let a thousand flowers bloom.

I was asked to talk about recent human rights development in the context of the WTO. However, that would be a rather short talk—even shorter than fifteen minutes. So let me expand my topic to bring together an outline of first year assessments of China's WTO implementation and the relevance of key WTO structural reform obligations to human rights.

Overall, China has committed to more than 685 trade regime commitments.[8] Although some of the key commitments are to be implemented upon accession or in the first few years, many are to be phased in over the next fourteen years (by 2016), making ongoing evaluation necessary. In general, most U.S. observers and interested parties (including various government agencies and companies in a range of sectors) acknowledge the enormously complex task China faces in implementing its WTO commitments. For example, the U.S. government and many business sectors have generally given China good marks at the first year mid-year point, and refer to the significant good-faith efforts by China, especially in implementing legislative reviews and restructuring various government ministries and agencies.

However, the United States Trade Representative ("USTR") reports significant problems in three specific areas: agricultural goods, intellectual property rights enforcement, and opaque and excessive requirements in many service sectors (e.g., capitalization requirements beyond international norms in the insurance sector). In the area of agriculture, the remaining problems include China's regulation of agricultural goods produced through bio-technology, the

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[7] Professor Hom's remarks were adapted from Sharon K. Hom, *China and the WTO: Year One*, CHINA RIGHTS FORUM, May 28, 2003, *available at* http://iso.hrichina.org/download_repository/2/SharonHom.pdf.

[8] Protocol on the Accession of the People's Republic of China, *available at* http://www.wto.org [hereinafter Accession Protocol]; WORLD TRADE ORGANIZATION, REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA (2001), *available at* http://www.wto.org; USGAO, WORLD TRADE ORGANIZATION: ANALYSIS OF CHINA'S COMMITMENTS TO OTHER MEMBERS (2002), *available at* http://www.gao.gov.

administration of its tariff-rate quota (TRQ) system for bulk agricultural commodities, and the application of sanitary and phytosanitary measures and inspection requirements.[9]

At the same time, serious concerns and problems regarding structural reform issues have been identified, e.g. lack of effective and consistent implementation at the national and sub-national levels, lack of transparency, lack of coordination among relevant Chinese government ministries, and noncompliance with many specific commitments. Many of these concerns have been addressed in high-level bilateral discussions and during the multilateral Transitional Review process held in late September 2002. In addition to these discussions, WTO members, including the United States, the European Union, and Japan have provided technical assistance and training to the Chinese government. Chinese officials publicly recognize the enormous challenges, and point to obstacles such as insufficient resources, limited familiarity with WTO requirements among government officials and SOE managers, technical translation difficulties, and concerns about the effects of particular WTO commitments on the domestic economy.

Here, I am not going to discuss fully the compliance efforts and issues presented by this vast and complex process, which also encompasses nondiscrimination and transparency commitments in other areas, such as import regulation, agriculture, trading rights, and industrial policies. Rather, I would like to focus on areas with particular implications for the rule of law[10] and human rights, in particular, China's trade and legal framework commitments on transparency, nondiscrimination, independent review of administrative decision-making, and uniform and impartial application of laws and regulations.

A key WTO principle is transparency. Transparency requires China to improve the openness of its trade regime by publishing and

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[9] UNITED STATES TRADE REPRESENTATIVE, 2002 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (2002) [hereinafter USTR REPORT], *available at* http://usinfo.state.gov/topical/econ/wto/02121202.htm.

[10] For the limited purposes of the present discussion, I use the rule of law to reference its usage within the WTO framework as well as the international human rights framework and to refer to a system that features independent and impartial decision-makers, transparent and open rules that apply uniformly to all, and a process that ensures the protection of fundamental rights and interests. The definition and scope of what a rule of law entails also raise a number of issues, reflecting a range of conceptions and relationships (or not) to political reforms and human rights concerns. The spring 2003 issue of the *China Rights Forum* was devoted to exploring and addressing many of these issues. For one survey study, see BARRY HAGER, THE RULE OF LAW: A LEXICON FOR POLICY MAKERS (1999) (commissioned by the Maureen and Mike Mansfield Foundation).

translating information and laws, and establishing a mechanism (enquiry points) for responding to questions and information requests from any WTO member—foreign company or individual. Accordingly, in January 2002, China established a WTO Enquiry and Notification Center operated by MOFTEC's Department of WTO Affairs, and other ministries and agencies have also established formal or informal subject-specific enquiry points. Under the WTO, China is required to make publicly available all national, provincial, and local laws, regulations, and other measures related to trade in goods and services, trade-related aspects of intellectual property rights, or control of foreign exchange.[11] A related transparency requirement is the provision of notice and reasonable opportunity for public comment to affected parties before new/modified laws, regulations, or other measures are implemented (with specified exceptions). China is also required to provide translations in one of the official WTO languages (English, French, or Spanish) of laws, regulations, and other measures no later than 90 days after implementation or enforcement.

According to the USTR, Chinese ministries and agencies had a poor record in 2002 of providing an opportunity for public comment before new or modified laws and regulations are implemented. The USTR reports that although the State Council issued new regulations in December 2001 that provide for public comment on the formulation of administrative rules and regulations, many government agencies and ministries continue to follow their pre-accession practices. The result is that only a small portion of laws and regulations were issued for public comment, and the comment periods were generally too short. In addition, translation of laws and regulations has lagged behind promulgation, in part due to the enormous quantity involved.[12] Both the lack of Chinese laws in translation and the inadequacy of public review undercut the predictability and openness of the Chinese business climate.

Another key WTO principle is nondiscrimination. Nondiscrimination is a key value that informs the core principles of WTO trade policies and of China's WTO obligations. Under the most-favored nation ("MFN") principle, China must extend to all WTO members the best trading privileges granted to any one member, and must treat goods of an importing WTO member's trading partners on equal terms with one another. Under the national treatment principle,

[11] Accession Protocol, *supra* note 8, ¶2.c.1.
[12] USTR REPORT, *supra* note 9.

China may not treat imported foreign products and services less favorably than domestic products and services. In adhering to this nondiscrimination principle, China must review all of its relevant domestic legislation, and repeal or revise any laws or regulations that are inconsistent with WTO obligations, as well as promulgate additional laws and regulations necessary for implementation of its obligations.

According to the Chinese official 2002 mid-year reports, China had completed review of relevant pre-WTO laws and regulations, and eliminated or revised over 2300 WTO-inconsistent laws and regulations.[13] However, MFN and national treatment obligations are still not observed in many areas. For example, U.S. businesses have reported that different tax bases are used to compute consumption taxes for domestic and imported products.[14]

Another area of WTO requirements concerns independent review of administrative actions. As part of its trade regime commitments, China agreed to establish impartial tribunals to review decisions by government authorities entrusted with administrative enforcement. The review procedures must include a right of appeal. One effort to improve the quality of decision-making has been the designation of certain higher-level courts to hear cases involving administrative agency decisions regarding international trade in goods and services or trade-related intellectual property rights.[15] During the pre-WTO accession period, China had already taken steps to address the poor quality of judges by requiring appointments based on merit and experience. However, existing judges were exempt from these qualification requirements. Since the overwhelming majority of Chinese judges does not have any formal legal training, these efforts to raise the professional caliber of the bench will be ineffective. There are additional obstacles presented by other systemic and structural problems, including rampant corruption, local protectionism, and Party control of courts, police, and prosecutors through political legal committees (*zhengfa weiyuanwei*) at every level.

A final area of structural reforms concerns uniform application of laws. China has committed to implementing the WTO Agreements in a uniform and consistent manner at the national, sub-national, and

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[13] Embassy of the People's Republic in the United States of America, *at* http://www.china-embassy.org (July 30, 2002).

[14] USTR REPORT, *supra* note 9.

[15] Supreme People's Court rules issued August 2002, effective October 2002.

local levels, and within the Special Economic Zones. It is also required to establish an internal review mechanism to investigate and address allegations of non-uniform application of laws reported by companies or individuals. In implementing these commitments, China has undertaken an extensive central government campaign to inform and educate both central and local government officials and state-owned enterprise ("SOE") managers regarding WTO rules and benefits. In addition to national efforts, several provinces and municipalities have also established WTO centers. An internal review mechanism to handle cases of non-uniform application has been established under MOFTEC's Department of WTO Affairs, but the actual workings are not yet clear.

These extensive rule of law-related commitments to ensure transparency, nondiscrimination, uniform application, and independent judicial review affect not only the development of China's trade regime, but also have implications for its overall legal reform efforts. The effective implementation of WTO commitments is particularly challenging in the face of the structural problems plaguing China's developing legal system—corruption, local protectionism, lack of adequately trained personnel, and the pervasive politicization and Party control of decision-making by the courts, police, and prosecutors.

Finally, let me conclude by reviewing some recent developments and suggesting a thought experiment. The values and core principles that are reflected in the GATT/WTO system include transparency, accountability, non-discrimination (concerning the treatment of foreign and domestic trading partners), and the rule of law. Adherence to these values and principles is meant to promote greater welfare maximization and commercial predictability, and requires the balancing of national interests with the demands of an open and fair global trading system.

However, until recently, the WTO system itself was a secretive, closed, exclusively governmental process accessible only to powerful sectors of the business community. Due primarily to pressures from the NGO community, the WTO is now beginning to open a small window into the labyrinth of its rules and processes. In an effort to increase access to information and expand opportunities for participation and input by a wider range of interested stakeholders, the WTO has begun to invite NGOs to its symposia, accept NGO briefs in WTO dispute resolution proceedings, convene meetings with NGOs,

and has developed an NGO forum section on the WTO website. These developments reflect changes (albeit still contested) regarding the roles of NGOs within the trade arena, and demonstrate to NGOs the value of targeting multilateral bodies in highly public ways and asserting concrete demands for the inclusion of civil society stakeholders outside of the business sector. The number of accredited NGO observers at the Ministerial Meetings has also grown from a small handful to thousands, in addition to the NGO briefings and activities.

In recent years, the case for normative and empirical connections between trade and human rights has been advanced before both international business and human rights communities. For example, the U.N. Office of the High Commissioner for Human Rights (OHCHR) has issued reports and recommendations regarding trade, the environment, corporate responsibility, and the advancement of human rights protections before various U.N. bodies and private sector groups.[16] Amid a backdrop of rising concerns about the effects of globalization, U.N. Secretary-General Kofi Annan called on business leaders to join an international initiative—the Global Compact—in an address to The World Economic Forum on January 31, 1999. The idea of the Global Compact was to bring companies together with U.N. agencies, labor, NGOs and other civil-society actors to foster action and partnerships in the pursuit of good corporate citizenship, also referred to as "corporate responsibility," "sustainable growth," and the "triple bottom line."[17] The high-level launch event at the U.N. Headquarters in New York on July 26, 2000, brought together senior executives from fifty major corporations and the leaders of labor, human rights, environment, and development organizations. China held its first meeting of Global Compact in China in December of 2002.

In a similar fashion, the lead-up to the 2008 Olympics and China's WTO implementation efforts will provide an environment of increased international scrutiny and attention that presents significant opportunities for a wider range of actors (media, governments, business, and NGOs) to develop more effective strategies to advance human rights concerns in China. The present global trading system is

[16] See Website of the Office of the United Nations High Commissioner for Human Rights, *at* http://www.unhchr.ch.

[17] For a compilation of relevant international treaties, codes, multilateral, private sector, and NGOs groups working on corporate responsibility issues in China, see *Corporate Responsibility Resources Guide*, CHINA RIGHTS FORUM, Spring 2003.

premised on the acceptance of liberal economic assumptions regarding the "problem"—how to maximize aggregate economic welfare—and the "solution"—markets functioning free from state interference. In the pre-WTO accession debates,[18] one argument posed by supporters of WTO accession for China suggested that economic liberalization and its accompanying legal reforms would create or at least encourage conditions conducive to more openness and political reform.

However, as WTO implementation obstacles have since made clear, effective economic reform requires many of the same legal protections called for by proponents of political and civil rights reform. Rather than validating a causal connection between trade and market liberalization followed by broader systemic reforms—or the current Chinese bifurcation of political and economic reforms—it has become clear that economic reforms actually travel in the same development boat as reforms necessary to protect international human rights.

Obstacles arising in the first year of China's WTO implementation suggest significant overlap between the development of China's new trade regime and a legal system that protects and promotes human rights. Proponents of both economic reforms and the protection of human rights point to structural and systemic problems in the legal system, problems of rampant corruption, the politicization of the decision-making processes due to the overarching role of the Party, and the urgent task of constructing a transparent, impartial, and independent legal system.

If we compare the economic, political, and legal reforms necessary to develop China's domestic system to integrate into both the global trade regime and the international human rights regime, we can see a number of parallels that feature values of transparency and the rule of law. The absence of independent and competent courts and accountable administrative decision-making pose serious obstacles both to the protection of individual freedoms and to the protection of trading and investment rights.

Despite these similar values and goals, it belabors the obvious to point out the differences in political will and effective implementation of these two arenas of China's integration into the global community. In accepting the trade-offs of global economic integration and the extraordinary degree of international scrutiny and

[18] Sharon K. Hom, *Playing by Whose Rules: Global Trade and Human Rights*, CHINA RIGHTS FORUM, Spring 2000, at 22-28.

accountability, the Chinese authorities clearly believed that they had something to gain from economic reform. It is also clear they believe they have a great deal to lose and fear from genuine political reforms.

However, consider the following record of China's participation in the international human rights regime: Over the past twenty years, China has voluntarily signed onto at least six core international human rights instruments aimed at protecting the rights of children, women, ethnic minorities, and other vulnerable groups.[19] By signing and ratifying these key documents, China has agreed to respect international standards and norms regarding freedom of expression, freedom of association, rights to information, and numerous other fundamental rights. China has also agreed to comply with the self-reporting system and monitoring mechanisms set forth by each instrument. Yet, as documented by Human Rights in China and other NGOs and international bodies, the government remains politically repressive and continues its crackdowns, executions, and detentions of religious leaders, Internet activists, and individuals peacefully voicing their criticisms of the government, or advocating for democratic reforms. The economic and social disparities between the coastal and interior areas, between Han and ethnic minorities, and between urban and rural residents, continue to widen, threatening stability and undermining the sustainability of any economic progress.

At the same time, consider the following aspects of China's WTO commitments and compliance efforts: The state has agreed to take on a pervasive and proactive role in advancing international trade regime values and implementing structural and specific WTO commitments through training, education, and legislative reforms, including efforts to change a whole culture embedded in *guanxi* (relationship) networks as the way of "doing business." In addition, China is submitting itself to extensive and detailed foreign and international scrutiny over the next ten or more years, providing information in a timely and responsive way, allowing for foreign review and input into legislative drafting processes, and agreeing to

[19] The Convention on the Rights of the Child (1992); U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (1988); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1980); International Convention for Elimination of Racial Discrimination (CERD) (1981); International Covenant on Economic, Social, and Cultural Rights (signed in 1997 and ratified in February 2001 with reservations on provisions regarding independent unions); International Covenant on Civil and Political Rights (signed on October 5, 1998, and not yet ratified).

greater scrutiny and even more rigorous commitments than commitments of other WTO members.

Now, imagine if this were not about multilateral trade and domestic economic reforms, but about the promotion of international and domestic human rights and political reforms. Imagine if China accepted and promoted human rights commitments with the same degree of political will and institutional allocation of resources, and willingness to attempt fundamental changes in the prevailing culture and norms of "doing business."

At this point that may seem a naïve vision of what is possible. But twenty years ago it was unthinkable that one of the world's bastions of Communism would agree to undertake such radical economic reform, or welcome "advanced productive forces" (Party-speak for Capitalists) into the Communist Party. It is also important to keep in mind that the Party and the government leaders are not as monolithic as their united public front suggests. Just as reformers within the Party advocated for the present economic reforms, there are also voices within the Party aware of the benefits of political reforms, including a reassessment of the June 4th crackdown. Most importantly, despite on-going crackdowns and political repression, Chinese citizens continue to press for a more open, fair, and democratic China. In the international arena, pressure by NGOs on multilateral bodies such as the WTO has opened up more opportunities for participation and input into policy-making that crosses the doctrinal barriers among trade, environment, labor rights, and human rights.

While recognizing the significant challenges facing China in fully implementing its WTO obligations, the international business community claims realistic expectations, but demands full WTO compliance with the letter and the spirit of the trade regime's obligations. The international human rights regime demands no less.

ADAM QI LI

After more than one decade of miraculous economic growth, China is now facing some of the most difficult challenges any country has ever encountered. In its accession to the WTO, China seems to have agreed to more than it can deliver. Even without the WTO, the Chinese government would already have had too much to deal with: from overtaxed farmers to urban unemployment and from billions of dollars of non-performing loans to the depressed stock market.

Corruption is skyrocketing, and the environment is deteriorating. With WTO membership, the challenges have become more monstrous.

This unbelievable transitional difficulty for China has become more obvious to the West. It is only a matter of time before the U.S. Congress will focus on how much China has delivered on its promises and how much it has benefited Americans in trade. China, in turn, could become more defensive, if either side of the Pacific does not handle the disagreement properly. The human rights and Taiwan issues could reinforce the distrust on both sides. If this becomes a pattern for the future of the Sino-U.S. relationship, it will certainly harm the interests of both sides.

Even if it is unavoidable that the China-U.S. relationship will occasionally suffer from backlashes, the divide between the two countries will likely not deepen. To accomplish greater bilateral understanding, it is indispensable to acknowledge that the transitional problems China faces are both fundamental and structural. These problems are likely to make China a difficult case in its implementation of WTO rules. China may miss some deadlines and fail to implement some needed rules and regulations in a timely manner. If this occurs, it is likely due to the fact that the Chinese central government has become crippled by its own domestic politics, and therefore is not able to push hard enough to enforce these rules, rather than its being unwilling to do so. Many people working with China's WTO teams have testified that China is working hard to meet its commitments. Given the current situation in China, I would argue that the implementation of WTO provisions is not a natural course. However, China would be more likely to live up to its commitments made in the WTO agreements if it could gradually build up the capacity to match its promises. Such an undertaking is impossible without strategic encouragement and engagement from the international community, especially from the United States. The United States should show strong leadership with acute insights, clear focus, and determination in this task, as it once did in the post-war reconstruction of Europe.

To start with, the United States should, first, support the overall effort by China to comply with the WTO terms, rather than highlight its possible noncompliance. Washington should work out incremental plans with China on issues concerning both parties and mark early successes. Second, the United States should recognize that WTO implementation is a long journey that requires patience. It should be

prepared to work on the foundations with China to ensure a smooth transition to a market economy. Washington should also mobilize both the business world and other concerned communities, both domestic and international, to support building up the basics in China, including an independent judicial system, a sound social safety net, and a healthy fiscal, tax, and financial system. Third, the Bush Administration should prioritize its targets in its relations with China, and pick the right issues to focus on at one period, so as to avoid unnecessary backfire on the United States and across the ocean. These efforts should be made in concert with other members of the European Union and the international community, including the United Nations and the World Bank, to acquire both legitimacy and synergy.

While several offices under the current administration are proactively working with China in the implementation process and focusing on both incremental enforcement and building up capacities, the Bush Administration sometimes departs from the traditional strategic ambiguity on Taiwan affairs and positions itself as fighting a new Cold War. By doing so, the United States risks its hard-earned WTO advantages and the U.S.-China relationship. The recent incidents, from President Bush's speech in Japan on his way to China, vowing the United States would defend Taiwan, to mindless slips, such as calling Taiwan the "Republic of Taiwan," all revealed a huge policy reversal. The negative effects are already perceivable. President Jiang Zemin openly visited Tehran in 2002. He was the first head of state to visit Iran since the Islamic Revolution of 1979. His visit is an open signal to the world that China does not buy the "Axis of Evil" formula. This is not what the current administration wants to see, but is at least partly the consequence of a series of American foreign policy missteps regarding China. The United States should rethink its strategies toward China now, before it is too late.