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# China's Long March down the WTO Road

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## **Abstract**

*This paper reviews the negotiations started in 1986 following the PRC's request to resume GATT status. It describes the phases of this negotiation up to the establishment of the World Trade Organization in 1995. It highlights the main issues of the negotiation including the basis on which the request is to be processed, including the mode of accession to the WTO and the status of a developing country claimed by China. Others relate to the substance of the demand, that is, the compatibility of China's economic and trade regime with WTO rules. The analysis shows the difficulty of negotiations confronting divergent perceptions of what the WTO system represents and the constraints it implies for the economic management.*

It is surprising, to say the least, that China, an original signatory to the General Agreement on Tariffs and Trade (GATT) in 1947, was withdrawn of from the latter at the request of Chiang Kai-shek in 1950, has still not regained its former membership status, ten years after having sent an official request to this effect to the Contracting Parties, in 1986, and after being admitted to full participation in the Uruguay Round negotiations and signing the Marrakesh Final Act in 1994. The fact is, however, that between 1946, the start of negotiations to establish an international trade organisation, and now a whole series of events have occurred that have helped to make China's status in the GATT a question which, although simple at the starting point, soon became very complex because of the economic and political transformations that have taken place since then, both inside China and abroad, in the entire international system.

In 1946, China, governed by Chiang Kai-shek, is already in the midst of a civil war, which does not prevent it from actively participating in the negotiations with a view to setting up an organisation intended to be the equivalent in the field of international trade, the International Monetary Fund. During the meetings of the Preparatory Committee of the United Nations Conference on Trade and Employment, held in London and New York in 1946 and in Geneva in 1947, and at the Ministerial Conference in Havana in 1947, it intervened on several occasions, and often successfully, on issues such as the inclusion of tied loans in the application of the Article XVII rules on state-owned enterprises, the rules applicable to development under Article XVIII, or the exceptions of Article XX in national emergencies. On May 21, 1948, China signed the GATT Interim Protocol of Implementation and became a full member of GATT. In 1949, however, the Chiang Kai-shek government was overthrown and the took refuge with his supporters on the island of Formosa (Taiwan) where he constituted a new

government and claimed the continuity of the Republic of China, with the help from the United States. On 1, October 1949, Mao proclaimed the People's Republic of China. Until 1971, only Chiang Kai-shek's China was recognised by the United Nations, which did not, of course, prevent the People's Republic of China from claiming Formosa and to denounce Chiang Kai-shek's government. Aware that he cannot make commitments for the whole of China in GATT, Chiang Kai-shek demanded withdrawal from the Agreement, withdrawal became effective May 5, 1950. Without accepting the legality of Chiang's actions, China's interest in GATT was largely untainted until the early 1980s, except in the 1960s when the GATT observer status of the Republic of China was challenged (Formosa). The participation of the Republic of China in the GATT activities as an observer was acquired in 1965 following the consideration of a request to that effect which had previously been transmitted to the Contracting Parties. In reporting on the subject, the President of the Contracting Parties stated, *inter alia*, that it had been the policy of the Contracting Parties to avoid unproductive controversies over political issues which did not significantly affect the substantive issues with which the Contracting Parties were concerned. For this reason, the Contracting Parties have made the case in Article 86 of the Havana Charter, namely, to avoid passing judgment in the United Nations on such matters.

Observer status, under the GATT 1947 and the GATT 1994 and the World Trade Organization (WTO), allows the government concerned to participate in Council meetings, to receive GATT documents and, by invitation, to participate in discussions without the right to vote.

In 1971, however, the United Nations General Assembly officially recognised that there was only one China (resolution 2758 of 25 October 1971), and from its first speech to the General Assembly, the PRC representative of the United Nations declared flatly that Taiwan was a province of China and not an independent country. Shortly after, at the opening of the 27th session of the Contracting Parties, the Chairman recalled that in 1965 the Contracting Parties gave to the United Nations a decision to admit the Republic of China as an observer and, noting the new UN decision and the relative unity of China, suggested that the Republic of China was now more accepted as an observer in GATT, a suggestion that had to be approved by the Contracting Parties. It as seen later how Taiwan, under the name of Chinese Taipei, returned to the charge in January 1990 by seeking GATT access under Article XXIII, not as an independent country, but in the name of China, 'Separate Customs Territory of Taiwan, Penghu, Kinman and Matsu'; in 1992, a working group on the accession of Chinese Taipei was effectively created, but with a majority recommendation not to grant the application before the People's Republic of China itself has found his seat.

In 1978, Deng Xiaoping came to power with a new team of leaders eager to revive the Chinese economy. Reforms were being undertaken with a view to greater market economy, a policy of openness to foreign investment was announced, and efforts were made to develop exports while maintaining control over imports. In the wake of these transformations, the People's Republic of China applied for and obtained, in 1982, admission as an observer to the GATT.

In June 1986, finally, China asked to resume its contracting status on the ground that the withdrawal notice of 1950 was null and void. At the same time, however, it expressed its readiness to accept a non-retroactive approach to the negotiation of its rights and obligations arising from the resumption of its

contracting status. This request was welcomed by many parties, including members of the European Community, the United States and Japan; but all were aware that this was a complex issue. As Gardner Paterson pointed out, it was clear to all that 'resumption' would require a special protocol or understanding because of the current structure of mainland China's economy. A working group was established March 4, 1987, following the deposit of China's memorandum on economic regime and its foreign trade regime, to consider the request of the latter. The work of this group progressed relatively well until the summer of 1989. The group met once more, in a purely formal way, in 1990, and then saw its work suspended until early 1992. From that moment until now, despite renewed deadlines, a consensus on the issue has not been reached.

To take stock of the subject and better understand of what is happening, it seems useful to return first to the period from 1986 to 1989, which can be considered as the exploratory phase of the negotiations on the return of China to GATT, to then deal with the period from 1992 to now, which marks the transition to the phase of actual negotiations, and finally question the prospects for a future settlement of the issue.

When China, in 1986, formally announced its intention to resume its GATT seat, it put forward three principles that would later be the basis of its negotiating position on the subject. The first principle was that having never legally renounced its seat in the GATT, there could be no question of it formulating a new application for accession. The second principle mentioned China's willingness to negotiate the terms of its return solely on the basis of tariff concessions, regardless of the peculiarities of its economic system. The third principle, finally, was that China would claim special treatment for developing countries. But these demands were not without raising serious problems which quickly aroused reactions which it is important to understand the subsequent evolution of its application.

Even before the establishment of the Working Party on the Status of Contracting Parties of China in March 1987, studies were undertaken to clarify the main aspects of the question. In particular, a symposium on 'China and the GATT' was held in September 1986 in Washington under the auspices of the Institute of International Law by JED McDonnell of Australia and Robert Herzstein of the United States. The study of the latter, published the same year in *Law and Policy in International Business*, was to have a certain influence on the subsequent structuring of the debate, the author tackling the main problems of an economic and political nature at the request of China. These problems concerned in particular the reinstatement procedure, that is the most appropriate legal and political way of reintegrating China into the GATT, including China's request for treatment as a developing countries, as well as the subject of the negotiation, namely the concessions that may be required of China in terms of market access, including changes to the functioning of its economy.

Before the creation of the WTO on 1, January 1995, the normal procedure to access the GATT for any State other than the 23 that were original signatories to the Final Act of the United Nations Conference on Trade and Development of 1988, was that of Article XXXIII which reads as follows:

Any Government not party to this Agreement or any Government acting on behalf of a separate customs territory which enjoys full autonomy in the conduct of its external commercial relations

and for other matters dealt with in this Agreement may accede to this Agreement, on its behalf or on behalf of that territory, on terms to be fixed between that Government and Contracting Parties. The Contracting Parties shall take the decisions referred to in this paragraph by a two-thirds majority.

The other procedure was that of the State succession provided for in Article XXVI (5) (c):

The customs territory for which a Contracting Party has accepted this Agreement shall enjoy complete autonomy in the conduct of its external commercial relations and for the other matters which are the subject of this Agreement, or if it acquires such autonomy, that territory shall be deemed to be a contracting party upon presentation by the responsible contracting party which will establish the facts referred to above by a declaration.

This last procedure obviously could not find application in the case of China. Specifically, a request for accession under Article XXXIII involved a number of steps that had to be met before a favourable decision was made, steps that could be shorter or longer according to complexity of the issues raised. Following an application for accession, a working group was first set up to consider the request in the light of documents setting out the economic structure of the country concerned and its international trade regime. These documents were also distributed to all Contracting Parties who could raise any questions and comments deemed relevant, which were forwarded to the requesting State for reply. The working group subsequently entered into discussions with the latter with a view to drawing up a draft protocol of accession in which the conditions of admission of the latter had to be specified. The last step was the approval of the Contracting Parties by a two-thirds majority. It is important to point out here that when a State accedes to the GATT under the Article XXXIII procedure, contracting parties which, at the time of accession, had not entered into negotiations with it, could, under Article XXXV, demand that the General Agreement does not apply to them.

With respect to the validity of the GATT withdrawal in 1950, China argued that the latter was ineffective because at that time the only government representing the Chinese people was the of the 1949 revolution and that the latter had never recognised the validity of this withdrawal, that the GATT itself had as its attitude on this subject to follow the position of the United Nations which in 1971 had recognised the People's Republic of China as the only representative of China. With regard to the implied consent to withdrawal argument, China argued that as early as 1950 it had warned other States that the People's Republic was the sole representative of China and that since then it had undertaken to have this position recognised, first in the United Nations, then to various other organisations.

Hence, to speak of an accession protocol within the meaning of Article XXXIII, there was only one step that some States might be inclined to take, especially the United States which was to protect their right, under Article XXXV, not to establish relations with a new member, and thus to continue to reassess on an annual basis the relevance of granting most-favoured-nation treatment to China. This may explain the publication in 1987 of a study by a Chinese author, Chung-chou Li recalling that China had never legally withdrawn from the GATT, this author argued that a protocol of accession could not be acceptable to the People's Republic. He therefore suggested that a declaration be made by the

Contracting Parties and China recognising the latter as the original Contracting Party, with all the rights and obligations of the other Contracting Parties at the same level of development. China, for its part, pledging to bring its trade laws and policies into conformity with the requirements of the GATT and the various trade codes existing or under negotiation in the Uruguay Round; as far as tariff concessions were concerned, these would be readjusted in the course of the Uruguay Round negotiations. But in this position, which was unlikely to be acceptable to the contracting parties, another Chinese author replied the following year proposing an essentially pragmatic approach. Closer to Herzstein, Feng Yu-shu position which he put forward in detail in 1988 when the Working Group on China started was the following formula.

China and the GATT members could formulate a special protocol for resumption of China's membership of GATT. From the date of signing of the protocol China would become a member of GATT. In this protocol, GATT members would recognise China as a member of GATT and the People's Republic of China as the sole legal authority of China. China would join GATT as if resuming membership, but would follow a new accession procedure. In this way, it would avoid the political problem associated with a new accession. Finally, it would meet some GATT members' request to be able to bargain on China's admission ticket. This latter approach reflected quite well what was happening on the ground. In fact, the task force set up in March 1987 had been instructed by the GATT Council to first examine the memorandum submitted by China on its internal economy and the organisation of its foreign trade by following the usual procedure for this purpose, i.e. the one used in the case of new applications for admission; it was then requested to provide a framework for the negotiation of China's market access commitments, to prepare a draft protocol outlining the rights and obligations of the Contracting Parties and China, and finally to consider any other relevant issues.

On February 23 and 24, 1988, China's Contracting Party Working Group successfully embarked on its substantive examination of China's foreign trade regime, leaving aside the question of the exact formula to be used for the reinstatement of China to its seat. Detailed discussions took place over the two days, including the reform of China's economic structure, its policy of openness to the outside world, China's participation in international economic, trade and financial organisations. Subsequently, there were several other meetings of the working group as well as bilateral meetings. The question of China's reinstatement procedure, however, remained unresolved. In 1992 shortly after the announcement of the resumption of talks with China an American author Laura Fisler Damrosch wrote:

The legal situation concerning the relationship of the ROC [Republic of China or Taiwan] and the PRC [Peoples Republic of China] to the GATT is thus clear: there has been no Chinese 'seat' since 1950. The eligibility of China or Taiwan for GATT membership, or the quest for GATT membership, must be considered *de novo*. As long as everyone understands what is involved, the choice of terminology in the documents can be made in accordance with political preferences..

China's declared desire in 1986 to reach an agreement on the sole basis of tariff concessions raised a problem that is already well known in GATT: that of the actual meaning of tariff concessions in the context of a planned economy where buying and selling decisions are not based on commercial

considerations but rather on the requirements of central planning. In such a context, lowering tariffs is largely of no consequence when fully-owned SOEs decide to buy or not to buy.

In his analysis of this question, Herzstein points out that the example of Yugoslavia could be invoked by China in support of its request to negotiate on the sole basis of tariff concessions; but, in his view, this example cannot be applied as it stands, inasmuch as Yugoslavia's economic regime, at the time of its accession to the GATT, was characterised by a high level of decentralisation, leaving a large margin of autonomy to state enterprises in relation to production, prices and purchasing decisions. Convinced that the Contracting Parties could not be satisfied with tariff concessions only, Herzstein then considered different solutions that could reassure the Contracting Parties of the level of real access granted by China, ranging from the commitment to import in increased quantity of foreign products to an in-depth reform of its economic regime as well as its commercial regime. Herzstein suggested that the problem of market access could be solved, and China's accession to GATT facilitated at the same time, if the reform undertaken went far enough, even though other problems could arise, such as a request from some Contracting Parties to be able to use safeguard measures specifically against China, or a greater emphasis on respect for intellectual property rights, which could complicate this process. This leads him to propose a six-step approach, which may overlap in part, for China's reintegration into the GATT. These steps are in order as follows: (1) information gathering; (2) definition of the criteria to serve as a guide for assessing whether China's economy has evolved sufficiently to justify its readmission to the GATT; 3) tariff negotiations; (4) provisional association; (5) granting GATT benefits to China as and when it its economy according to established criteria; (6) Admission of China as a full GATT member.

The most interesting part of this analysis relates to the criteria that Herzstein suggested in determining when China's economy would be sufficiently liberalised to permit its readmission to the GATT. These criteria imply a fundamental transformation of the Chinese economy: While a full examination of the extent of the reforms would be necessary to meet these goals, these milestones would include: (1) reduction of price controls on major classes of products, and (2) reduction of central planning measures (3) decentralising economic decision making (4) availability of information concerning potential Chinese purchasers, (5) presence of a codified, uniform tariff system.

Interestingly, many of these requirements formulated by Herzstein were addressed later, directly or indirectly, not only in the memorandum submitted by China in 1987, but also in subsequent discussions of the working group. For Chung-chou Li, however, this view of the market access issue did not sufficiently take into account the significant changes in the Chinese economy since 1978. Categorically rejecting any attempt to impose on China. discriminatory clauses of the kind contained in the Protocols of Accession of Poland, Romania and Hungary, and recalling that the Contracting Parties also had an interest in reinstating as soon as possible a state such as China which has a huge internal market, he suggests an accelerated admission procedure that could encourage China in the path of greater openness.

On the issue of market access, the position of Feng Yu-shu is very similar to that of Li Chung-chou. First commenting on the suggestion by Herzstein of negotiations in six steps, he wrote that the milestones approach is a conservative option, that is, to wait for China's economy to become more decentralised to

conform to GATT rules. Subsequently, Chung-chou Li that the issue of market access is through the conclusion of a set of agreements aimed at reducing not just tariffs but also of certain non-tariff barriers already covered by GATT agreements, as is the case for import licensing, customs valuation, subsidies and countervailing duties, standards and regulations, technical issues, etc. However, the issue of market access was in fact much more complex and fraught with difficulties than both commentators had suggested. The Working Party on China's Contracting Party Status, after addressing the issue of market access for the first time in February 1988 on the basis of information originally submitted by China in 1987 and subsequent reactions by the Parties in the rest of 1988 and the first half of 1989. With regard to China's foreign trade regime, for example, at the end of 1988, the working group had a very elaborate document setting out in a general way China's institutional structure in the economic field, import and export regimes, internal taxes and regulations, China's foreign trade relations, and so on. But some questions still remained unanswered. According to Gardner Paterson, in the Spring of 1989, the Working Party had reached a relatively advanced stage in its examination. There remained, however, quite a few doubts and concerns among the participants regarding *inter alia*, pricing practices, customs procedures, bilateral trading arrangements and the issue of transparency in the PRC's trade regulations. Unfortunately, the momentum that seemed to have developed between 1988 and 1989 was completely shattered by the events in 1989. Except for a purely formal meeting in September 1990, the China Status Working Group was not scheduled to meet again until early 1992.

When the work was resumed, the working group was eager to fill the gap quickly. In October 1992, it was decided that the group should follow a two-pronged approach, one of which was to continue the examination of China's economic and trade regime in the light of GATT and WTO principles and the other was to seek consensus on the issues to be addressed in the admission protocol. At the same time, bilateral negotiations were undertaken between the Contracting Parties and China on China's commitments on tariffs, non-tariff barriers and services. But soon enough it became clear that China's readmission to the GATT was not going to proceed as quickly as China wanted, with some states, most notably the United States, showing little inclination to abandon an important means of pressure to obtain from it clear and precise commitments as regards the functioning of its economy.

The continuation of the examination of China's economic and trade regime, the so-called clarification procedure, gave rise to sustained exchanges between China and the members of the group on issues such as transparency, the uniform application of the trade regime, tariff and non-tariff measures, agricultural policy, state trading, price reform, the exchange system, the system of services, etc. In the course of this exchange, the documents filed by China in 1987 and subsequently were amended and expanded to respond to the requests for clarification of the members of the group and to take into account the numerous amendments made to China's economic and trade regime with a view to making it comply with the requirements of the GATT.

The adoption of a new Foreign Trade Law marked a turning point for China in this regard. As an explicit response to the concerns of the GATT Contracting Parties with respect to China's foreign trade regime, this text implicitly raised the question of the limits of this clarification process. Adopted in May 1994, the new Foreign Trade Law entered into force on July 1, 1994. As China strived to integrate its foreign trade system into the international trade community, it became apparent that China needed a well-drafted

and balanced foreign trade law. The absence of a foreign trade law had not been slowed down by the promulgation of a series of supplemental regulations, but it had also contributed to a lack of transparency, which was a major concern of the GATT Contracting. Following a detailed examination of the new law in light of the requirements of the GATT, it was concluded that, despite the presence of certain questionable administrative controls, the text largely met the expectations of the Contracting Parties in this regard and could easily, with some rectifications, serve as a basis for China's reintegration into the GATT. The time had come to move to the final stage of the negotiation, there was only one step.

In fact, China had already hinted, presenting in March 1994 GATT customs discount offer on industrial products, coupled with a gradual elimination of quantitative restrictions on some 1000 products, it was the final offer for readmission to the GATT not later than 31 December 1994. But that date would pass without a resolution and the failure was all the more serious in that would now be necessary to consider the reintegration of China in GATT in the context of the much more demanding WTO by 1 January 1995. Somewhat annoyed, China suggested in December 1994, that the fault lay with a few countries, not to mention by name the United States, which, for essentially political reasons, had chosen to obstruct the negotiations by making excessive demands. It must be said that some Contracting Parties, in particular the United States, Europe, Japan and Canada, still had serious doubts about the actual functioning of the Chinese economy and did not intend to be rushed into their analysis of it. Among the issues that were problematic were, in addition to respect for intellectual property rights, those of unequal application of laws and regulations within China, the numerous and more or less disguised quantitative restrictions on the exchange of goods and services, the limited autonomy of state enterprises, and the question of relative price efficiency mechanism in the context of a partially planned economy. But obviously, these reactions were no longer so much in the process of clarifying China's economic and trade regime, but in a process of negotiating China's entry requirements into the new WTO framework. ,

Discussions on issues related to the admission protocol began in 1992. Building on the information obtained through the clarification process, these discussions actually mark the beginning of the negotiations on China's reinstatement conditions in the GATT. First, they took the form of informal meetings in which various points were discussed that could be taken into consideration. The aim was to arrive at a consensus on the list of subjects in question as well as the treatment of these subjects. By mid-1994, discussions were sufficiently advanced to begin to circulate informal drafts of the document in question.

The inability to reach an agreement by 31 December 1994, as requested by China, did not prevent the continuation of discussions informally throughout 1995, with the multilateral process resuming from May 1995 onwards, the General Council of the WTO gave China observer status at the WTO. A rather intense activity took place in the autumn in anticipation of a new meeting of China's contracting party task force, scheduled for late 1995. However, hopes for an unblocking this was reduced significantly following a meeting in England on October 7-8, 1995, of the four major trading powers in the 'Quadrilateral', namely, the United States, the European Union, Japan, and Canada. At this meeting, US Trade Representative Mickey Kantor adopted an attitude that left little room for compromise, 'Beijing must be more or less compliant with the requirements of the WTO. Its admission therefore depends

entirely on itself,' he said, thus a strikingly different from the position expressed a few days earlier by the European Union in a meeting with the Chinese Minister for Foreign Trade and Economic Cooperation, Wu Yi, a position that was more favourable to the idea of a quick ascension for China, accompanied by safeguard clauses and a transition period. In November 1, 1995, the US Representative at the trade level added that in his opinion, China was unlikely to accept a provisional admission to the WTO.

This divergence of views between the European Union and the other members of the Quadrilateral deserves a brief mention, because behind this is the controversial question of China's admission as a developing country. Until 1995, China's position had not deviated from what it had hinted at in its application for admission in 1986, namely, that it considered itself entitled to be admitted as a developing country, with all the possibilities of protecting its emerging industry. For the United States, however, the answer to this question was not self-evident, even though it was recognised that China could be considered in many ways as a developing country. In summer 1995, China hinted that it could accommodate a status of developing countries restricted to certain sectors. Sometime later, during a visit to Beijing, US Trade Representative Assistant Charlene Barshefsky said the question of whether China was a developing country or a developed country was nothing but a 'a red herring' and that the real challenge was to reach an acceptable agreement on some 25 to 30 significant issues involving all part of a settlement with the WTO.

Against a backlash, China took advantage of the Asia-Pacific Economic Cooperation (APEC) Summit in Osaka on November 19 to resume its bid for the WTO by announcing a drop in tariffs and the promise of a reform of its trading system. More specifically, China pledged to lower tariffs by 'at least 30 percent' on 4,000 unspecified products in early 1996 and to eliminate quotas on 170 goods; it also announced that foreign companies would be allowed to form, on an experimental basis, mixed-capital firms specialised in import-export, and announced the opening of the retail trade to foreign investment, always in the form of trials and through joint ventures. This new Chinese initiative was welcomed by several states, including the United States, but without changing the US position on the conditions of China's accession to the WTO. At the end of 1995, the US administration remained more than ever determined to obtain concrete concessions from China, not promises and vague commitments. In such a context, it seemed wise to postpone the meeting of the working group scheduled for December 7 and 8, which did not prevent China from holding a series of bilateral meetings with various accredited representations to the WTO.

It was only in the last days of March 1996 that the first meeting of the WTO Working Party (instead of the GATT Working Party) was held on China's contracting party status. The latter apparently began with a warning from China's Foreign Trade Minister to the United States that those who sought to exclude China were misguided. At the end of a sometimes stormy meeting, significant progress had been made in the sense that the debate had taken a much more concrete turn and resulted in a commitment by China to provide accurate information on the opening of its market, to indicate what reservations it wished during the transition period, and to table a timetable for the removal of the remaining obstacles.

The announcement by China in early April 1996 that it intended to reduce tariffs on some 4,994 products was received as a tangible sign of its willingness to be admitted to the WTO, although for some this move was largely offset by tax increases. The latest developments on the issue of China's WTO admission still point to a tense climate. Thus, in a speech to the Paris Chamber of Commerce in mid-April, China's Prime Minister Li Peng publicly accused the United States of seeking to delay China's entry into the WTO for political reasons. A few days later, Japan allowed that it would put it on the agenda of the next meeting of the Quad in Kobe the question of the admission of China to the WTO. Finally, on April 24, WTO Director-General Renato Ruggiero told a press conference at the World Trade Congress in Singapore: 'China's active participation in this negotiation, with a really constructive and impressive offer would be a very important element in shortening the negotiations'.

Judging by these remarks, it is quite obvious that for the time being, the ball was in China's court. But judging by a spokesman for the Chinese Foreign Ministry, China still considered that it met the basic requirements to be admitted to the WTO and that the only two obstacles to its entry resided in the exorbitant demands of some countries and the intrusion of political considerations. Although it is becoming increasingly clear that the process of negotiating China's entry protocol to the WTO would extend beyond 1996, one can already get an idea issues that would be addressed in this process based on the public pronouncements of countries such as Canada, the United States and the European Union on the conditions China should meet to join the WTO, advanced positions by China itself on some of these issues, as well as observer analyses. Many of these issues would be relevant to market access.

In general, the reforms that must be undertaken before China can meet the conditions set out by the members of the working group include the elimination of import bans, restrictive licensing and other controls or restrictions, the abolition of all restrictions on access to foreign exchange and the full convertibility of the Chinese currency, the full liberalisation of domestic prices so that they reflect the actual costs of production, the uniform application of laws and regulations in all. With respect to the United States, the report of the US Trade Representative on Trade Barriers Imposed by Foreign States, issued in March 1996, recognises that significant progress had been made in opening up the Chinese market but not less than the existence of numerous problems. These included restrictions on the type and number of firms licensed to trade abroad, non-tariff barriers implemented at both national and regional levels, standards and certification, government procurement, enforcement of intellectual property rights, restrictions on trade in services and, in general, lack of transparency and uniformity in the implementation of laws and regulations. As regards, for example, the new foreign investment guidelines issued in June 1995, the document in question notes: In June 1995, Chinese authorities issued investment 'guidelines'. The new guidelines were a positive step toward clarifying China's policies on foreign investment. However, a continued general lack of transparency and inconsistency in the implementation of regulations continue to hinder investors that meet the substantive requirements of the guidelines.

The European Union shared substantially the same concerns. In a communiqué dated 20 October 1995, Agence Europe identified the following seven sectors as the main areas of concern for the latter: (1) the high level of Chinese import tariffs; 2) the services market (notably the financial services market, 3) the import and export monopoly; 4) import quotas (cars, etc.); 5) industrial policies (including different

subsidy practices); 6) export obligations to foreign companies in China; 7) the situation in the public markets. To this must be added of course the implementation of the Chinese copyright law, which had been very severely criticised. In addition, as noted above, the European Union showed itself in 1995 open to the idea of a rapid accession of China, accompanied by safeguard clauses and a transition. This assumption of specific safeguard clauses *vis-à-vis* China, although discarded by China in 1986 as a form of discriminatory treatment inconsistent with the GATT and unacceptable, could be found in the protocol.

Other issues such as China's status as a developing country and the legal basis for China's admission to the WTO would also need to be addressed in the protocol. At the moment, the debate between the United States, which wanted to see China assume all the commitments of the WTO member countries and China, which continued to claim the status of developing country with all that implies legally, appeared far from settled. Was it possible to define an intermediate status in the admission protocol that would be specific to China? As China's entry basis to the WTO, the solution initially contemplated by China at the time of the signing of the Marrakesh Act was admission under the Article XI of the Marrakech Agreement Establishing the World Trade Organization, which provides in paragraph 1 as follows:

Contracting Parties to the GATT 1947 on the date of entry into force of this Agreement [... accepting this Agreement and the Multilateral Trade Agreements, for which Schedules of Concessions and Commitments are annexed to the GATT 1994 and for which Schedules of Specific Commitments are annexed to the GATS, will become Original Members of the WTO.

But in order to do so, it was first necessary for China to be reinstated to its original membership of the GATT 1947, or at least to have become a party to the General Agreement, before the entry into force of the Agreement establishing the WTO. This was technically possible under Article 5 of the Final Act Embodying the Results of the Uruguay Round Multilateral Negotiations, which reads as follows:

Before accepting the WTO Agreement, participants who are not Parties to the General Agreement on Tariffs and Trade must first have completed their negotiations for accession to GATT and become Contracting Parties thereto. For participants who are not Contracting Parties to the General Agreement at the date of the Final Act, the Schedules are not definitive and will be subsequently established for the purposes of their accession to the General Agreement and acceptance of the WTO Agreement.

But with the passage of time, this hypothesis became less and less plausible. Indeed, China's acceptance of the WTO Agreement and multilateral agreements, once it became a member of the General Agreement, should have occurred by 31 December 1996 at the latest, unless the Ministers decided otherwise. However, considering the state of the negotiations, there was little hope that this deadline could be respected. The solution now seems to be that of China's accession to the WTO on the basis of Article XII of the Marrakesh Agreement Establishing the World Trade Organization.

Summing up, therefore, the issues that are likely to be part of the report of China's Contracting Party Status Working Group and which will come together, once an agreement has been reached, in the

admission protocol submitted to the membership. of the WTO, would be the following: mode of accession to the WTO, status of developing country of China, right of access of foreign companies to the Chinese market, commercial autonomy of Chinese companies, exchange controls, price controls, non-tariff measures, standards and technical regulations, safeguards, transparency, uniform application of commitments within China.

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