

# International Trade Law

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*After intensive scrutiny by a Chinese postal officer, my souvenirs were finally on their way home. I was promised delivery in 4 (!) months—the box arrived in 2 weeks! I guess Chinese boats are faster than the adage once held.*

*In fact, nothing in China is the same as it was long ago (or, even yesterday). Since its accession to the World Trade Organization in 2001, economic, political, and demographic changes have occurred at breakneck speeds. Take a guided tour through Beijing as China transitions from a non-market economy into a global force...*

## I. Historical Context

### A. Post- WW II

Purpose = to maximize the economic use of resources by reducing tariffs and import quotas

- General Agreement on Tariffs and Trade (“GATT 1947”)—quasi-treaty created in 1944 at Bretton Woods, NH [Updated during the Uruguay Round to include new obligations upon its signatories as well as create the WTO]
- Not self-executing under U.S. law and requires congressional approval and enacting legislation
- Based on the “*most favored nation principle*”: Conditions applied to the most favored trading nation with the least restrictions must be applied to all other trading nations
- Entering countries negotiated trade agreements during “rounds” which bound them to tariff reductions subject to exceptions and modifications for each country
- Rounds and membership listed chronologically:
  - ♦ Geneva (1948): 23 countries
  - ♦ Ancey (1949): 13 countries
  - ♦ Torquay (1951): 38 countries
  - ♦ Fourth (1956): 26 countries
  - ♦ Dillon (1962): 26 countries
  - ♦ Kennedy (1967): 62 countries
  - ♦ Tokyo (1979): 102 countries
  - ♦ Uruguay (1993): 125 countries
- China was an original signatory but lost its status due to its split from Taipei in 1949

### B. Modern Era

Purpose = to establish an international rule-making organization which can resolve member disputes

- World Trade Organization (“WTO”, also known as “GATT 1994”)
- Headquartered in Geneva, Switzerland
- Founded by 75 of the original GATT members, followed by another 52 which rejoined during the next 2 years
- 21 new (non-GATT) members have joined and 28 are currently negotiating their membership
- As of December 15, 2005, there are 150 members in the organization, with the Kingdom of Tonga becoming the 150th member
- Countries of the European Communities are dually represented collectively and individually
- 15 countries and 2 territories have so far not had any official interaction with the WTO, including Eritrea, Somalia, Liberia, Turkmenistan, North Korea, Monaco, San Marino, East

**Monica Haven, E.A., A.T.A.**

1534 South Edris Drive \* Los Angeles, CA 90035 \* (310) 286-9161 \* FAX (310) 557-1626 \* e-mail: mhaven@pobox.com

Timor, Comoros, Nauru, Tuvalu, Palau, Kiribati, Micronesia, Marshall Islands and the territories of Western Sahara, Palestine

**KEY**

Green = Members

Yellow= Observers

Grey = Non-members



1. Major Principles
  - ◆ Discrimination-free trading
  - ◆ Minimize tariffs and non-tariff barriers
  - ◆ Develop a predictable trading system that can ensure that markets will remain open
  - ◆ Promote competition
  - ◆ Accommodate less developed countries to give them time and flexibility to adjust and enter into world markets
2. Structure
  - ◆ Ministerial Conference meets every 2 years to decide on all matters under any of the multilateral trade agreements
  - ◆ General Council meets regularly and is comprised of representatives (usually ambassadors or equivalent) from all member governments
  - ◆ Dispute Settlement Body is comprised up of all member governments
  - ◆ Councils for Trade work under the General Council in different fields such as intellectual property rights, goods and services
3. Trade Negotiations
  - ◆ Use consensus to find the most widely acceptable solution, but often time-consuming and potential for ambiguities in final agreement [→ request for objections rather than a show of affirmative votes; if none given then approval is presumed]
4. Dispute Resolution
  - ◆ WTO is arbiter of disputes between member states with significant power to enforce its decisions through trade sanctions for failures to comply
  - ◆ Dispute Settlement Panel (3 officials) meets in secret and is not required to alert national governments that their laws have been challenged
  - ◆ Rulings may be appealed once (→ negative consensus whereby decision is automatically validated unless agreement *not* to adopt)
  - ◆ Thus, decisions are final but lack political legitimization since panel is not representative of national membership
  - ◆ Sanctions include monetary compensation or unilateral suspension of concessions
5. Agreements
  - ◆ Roughly 30 agreements which must be individually ratified by each country seeking membership, including:
    - ◆ Agreement on Agriculture (regulates domestic support and export subsidies)
    - ◆ General Agreement on Trade in Services (extends multilateral trading to services)

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- ♦ Agreement on Trade-Related Aspects of Intellectual Property Rights (deals with copyright., trademarks, patents, industrial designs, and undisclosed or confidential information)
- ♦ Agreement on the Application of Sanitary and Phytosanitary Measures (establishes policies relating to food safety, as well as animal and plant health)
- ♦ Agreement on Technical Barriers to Trade (ensures that technical standards, as do not create trade barriers)

#### 6. Criticisms of Economic Globalization

- ♦ Free trade benefits the rich at the expense of the poor
- ♦ Savings are forced to flow into the U.S. rather than into developing nations
- ♦ Debt is growing at a dangerous rate
- ♦ Corporatist agenda seeks to shape the political policy of nation-states
- ♦ Focus is on money, not people as evidenced by strict immigration controls and the lack of labor rights
- ♦ Needs of the developing countries, as well as issues of health, safety and environment, are often ignored



On the other hand...

- ♦ Percentage of people living on less than \$1/day has halved in only 20 years
- ♦ Only 10% of the world population has a per-capita food supply under 2,200 calories/day (down from 56% in the mid-1960s)
- ♦ Global literacy has increased from 52% in 1950 to 81% in 1999
- ♦ Life expectancy has almost doubled in the developing world since WWII
- ♦ Democracy is now practiced in 62.5% of all nations

[\[http://en.wikipedia.org/wiki/Globalization#Anti-globalization\]](http://en.wikipedia.org/wiki/Globalization#Anti-globalization)

#### C. China and the WTO

##### 1. Preparatory Measures

- November 1999: China and U.S. sign a bilateral market-access agreement whereby China agreed to lower tariffs and abolish market impediments allowing Chinese and foreign businessmen to import and export without using a government middleman
- Multilateral accession package included China's promise to foster the rapid development of foreign-invested factories which assemble imported components for export
- China eliminated time restrictions on the establishment of joint ventures, provided some assurances against nationalization, and allowed foreign partners to become chairs of joint ventures
- Some foreign banks were granted permission to open branches in Shanghai and foreign investors were allowed to purchase special "B" shares of stock on the Shanghai and Shenzhen Securities Exchanges
- Forced to systematically revise domestic laws, China amended 210 legal pronouncements and repealed 559 (!)

##### 2. Accession

- Negotiated by Charlene Barshefsky, Clinton's Trade Representative approved by Senator Jesse Helms, chair of the Foreign Relations Committee
- December 11, 2001: People's Republic of China joined the WTO after 15 years and 5 months of negotiations (the longest in GATT history—the shortest accession)

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negotiation was that of the Kyrgyz Republic, lasting 2 years and 10 months. Russia, having first applied to join GATT in 1993, is still in negotiations for membership)

- January 1, 2002: Republic of China (Taiwan) joined under the name "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu."
- Specific requirements of China's accession protocol include:
  - ♦ Transparency – "all laws, regulations, and other measures pertaining to or affecting goods, services, TRIPS, or the control of foreign exchange" shall be made available to WTO members
  - ♦ Right to Trade – China "shall progressively liberalize the availability and scope of the right to trade" so that within 3 years all enterprises have free access China's markets
  - ♦ Non-Tariff Measures – China "shall eliminate and shall not introduce, re-introduce or apply" any measures that cannot be justified under the WTO Agreement
  - ♦ Taxes – China shall ensure that all internal taxes are in conformity with GATT
  - ♦ National Treatment – China shall repeal "all WTO inconsistent laws, regulations and other measures" and treat like or substitutable goods equally, whether imported or domestic
  - ♦ Anti-dumping – Companies are prohibited from using domestic profits to sell their products more cheaply abroad than at home
  - ♦ Intellectual Property – China must take proactive steps to protect copyrights and patents

### 3. The Results

- China's global trade exceeded \$1 trillion in 2004, twice that of 2001
- Exports in 2005 = \$762 billion (versus \$660 billion imports)
- Wal-Mart, the largest retailer in the U.S., is China's 7th largest export partner, just ahead of the United Kingdom
- Russia is China's 8<sup>th</sup> largest trade partner and China is now Russia's 4<sup>th</sup> largest trade partner with trade volume increasing 37% (!) in 2005 compared with 2004
- Out of the 5 busiest ports in the world, 3 are in China

[http://en.wikipedia.org/wiki/Economy\\_of\\_the\\_People%27s\\_Republic\\_of\\_China#Trade](http://en.wikipedia.org/wiki/Economy_of_the_People%27s_Republic_of_China#Trade)

## II. China Today

- Slow Boat (?)
- The Formidable Wall
- Morning, Noon and Night
- Not your father's Communism
- Relations with Taiwan

## III. The Future of the Communist State

- Investing in China
- Commitments Fulfilled
- Promises Made
- Immense Potential
- What's to come?

### **DISPUTE DS252:**

Definitive Safeguard Measures on Imports of Certain Steel Products

- March 26, 2002: China files complaint against U.S. for applying increased duties and tariff rate quotas to certain steel products.
- Nov. 10, 2003: WTO finds that each of the 10 safeguard measures at issue is inconsistent with U.S. obligations under GATT 1994.
- Dec. 4, 2003: U.S. terminates all of the safeguard measures

### **DISPUTE DS309:**

Value-Added Tax on Integrated Circuits

- March 18 2004: U.S. claims that Chinese—but not foreign—enterprises receive a partial refund of the 17% VAT tax imposed on integrated circuit producers.
- July 14, 2004: China and U.S. agree that China will amend or revoke the measures at issue.
- Oct. 5, 2005: All terms of the agreement have been successfully implemented.

[Syllabus is intended to accompany PowerPoint presentation...]

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