PRIMERUS NATIONAL CONFERENCE 2004

Doing Business With China

What Your Clients Need to Know

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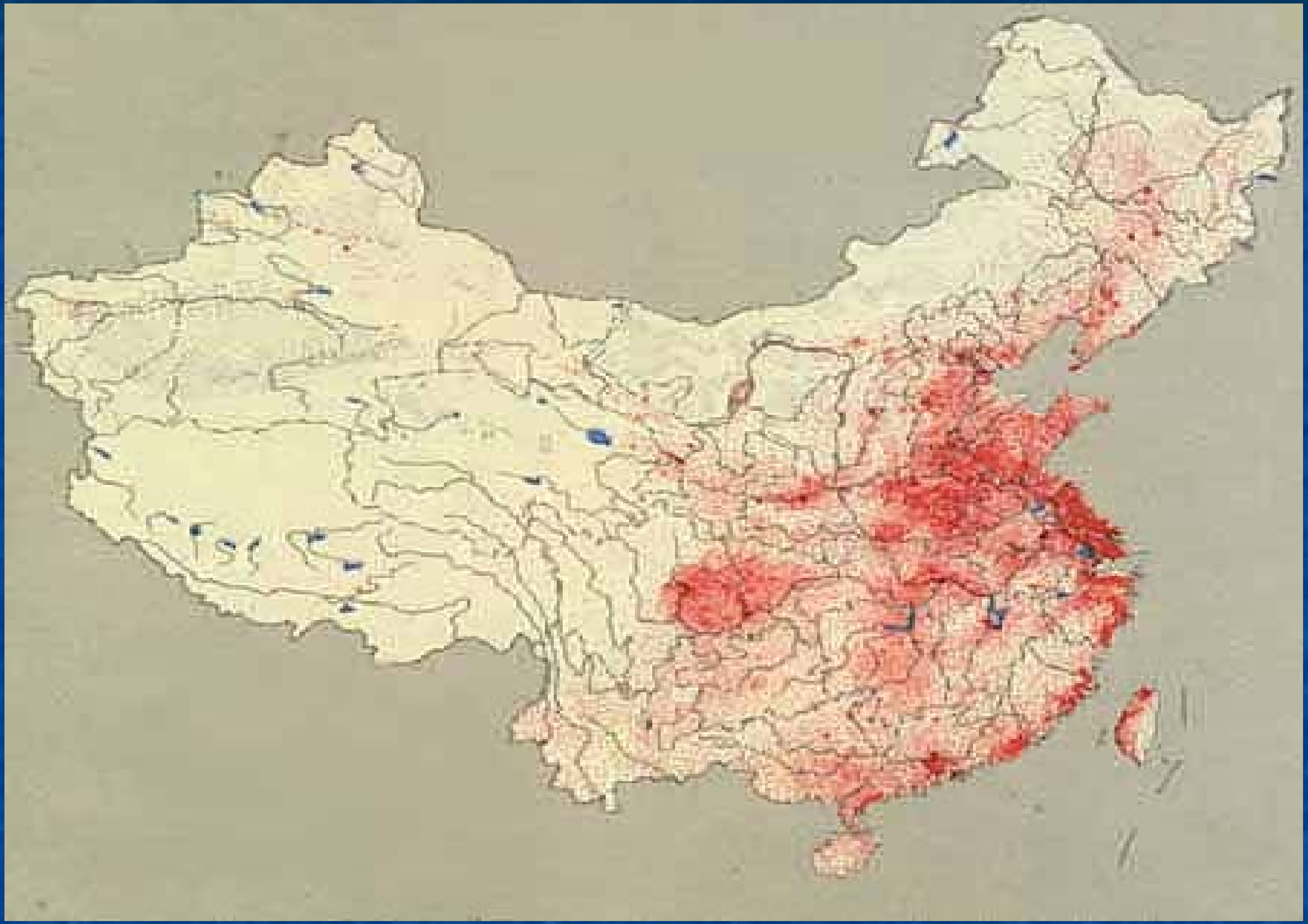
Chinese Economic and Demographic Data

Population

- **1.3 Billion – Total Population**
  (July 2004 Source: CIA World Fact Book 2004)
- **1 Million – Very Wealthy**
- **50 Million – Middle Class**
  (Able to Purchase Appliances, Motorcycles, Small Cars)
- **350 Million – Introductory Consumers**

(Source: Mackenzie & Co.)

China's Population Density



Source: Zhongguo dili congshu bianji weiyuanhui, *Zhongguo zonghe dituji* (Beijing: Zhongguo ditu chubanshe, 1990), at 47. Available at http://depts.washington.edu/chinaciv/geo/people.htm.

Nationalities and Language

- **56 Nationalities**
  - Han Nationality Is Largest Group
- **Official Language - Mandarin Chinese**
  - Within Han Majority, Numerous Dialects of Mandarin
  - Despite Different Dialects, All Han Use Same Written Language and Share Common Culture
- **Other 55 Minority Nationalities Mostly Speak Their Own Languages - Falling Into 15 Main Language Families**

Geography

- **China Is 4th Largest Country by Land Area**
  - Following Russia, Canada, and USA
  - 9,596,960 square kilometres
    (slightly smaller than USA @ 9,631,418 sq km)
    (Source: CIA World Fact Book 2004)
- **China Borders - 14 Countries & 3 Seas**

- Vietnam
- Myanmar (Burma)
- Bhutan
- Pakistan
- Tajikistan
- Kazakhstan
- Russia
- Yellow Sea
- South China Sea
- Laos
- India
- Nepal
- Afghanistan
- Kyrgyzstan
- Mongolia
- North Korea
- East China Sea

China and the Neighboring Countries

Source: CIA, The World Factbook 2004
(http://www.cia.gov/cia/publications/factbook/reference_maps/asia.html)

Political/Administrative Divisions

China is made up of:

- **22 provinces**
  - China officially considers Taiwan to be its 23rd province
- **5 autonomous regions**
- **4 government-controlled municipalities**
- **2 special administrative regions**
  - Hong Kong in 1997
  - Macau in 1999

Map of Administrative Divisions

Source: Congressional-Executive Commission on China (CECC) website (http://www.cecc.gov/pages/prcEgovDir/dirEgovPRC.php).

Overview of the Government

- People's Republic of China - Founded Oct 1, 1949
- Communist State
- National Capital - Beijing
- Governing Law - Chinese Constitution
  - Promulgated December 4, 1982, Last Amended 2004
- Governmental Structure - 3 Branches:
  - Executive
  - Legislative
  - Judiciary

PRC Government Structure

CENTRAL COMMITTEE OF THE CHINESE COMMUNIST PARTY

General Secretary
Hu Jintao

Central Military Commission Chair
Jiang Zemin

Politburo Standing Committee Members (by rank)
Hu Jintao
Wu Bangguo
Wen Jiabao
Jia Qinglin
Zeng Qinghong
Huang Ju
Wu Guanzheng
Li Changchun
Luo Gan

President Hu Jintao

Vice President Zeng Qinghong

NATIONAL PEOPLE'S CONGRESS

Standing Committee

Chair Wu Bangguo

Vice Chairs
Cheng Siwei
Ding Shisun
Fu Tieshan
Gu Xiulian
Han Qide
He Luli
Ismail Amat
Jiang Zhenghua
Li Tieying
Lu Yongxiang
Raidi
Sheng Huaren
Uyunqimg
Wang Zhaoguo
Xu Jialu

Secretary General Sheng Huaren

NPC Committees

Directors

Agriculture and Rural Liu Mingzu

Education, Science, Culture, and Health Zhu Lilan

Environment and Resource Conservation Mao Rubai

Finance and Economics Fu Zhihuan

Foreign Affairs Jiang Enzhu

Internal Affairs Administration He Chunlin

Legal Affairs Yang Jingyu

Nationalities Doje Cering

Overseas Chinese Affairs Chen Guangyi

CHINESE PEOPLE'S POLITICAL CONSULTATIVE CONFERENCE

Chair Jia Qinglin

Supreme People's Court
President Xiao Yang

Supreme People's Procuratorate
President Jia Chunwang

STATE COUNCIL

Premier
Wen Jiabao

Vice Premiers
Huang Ju, Hui Liangyu, Wu Yi, Zeng Peiyan

State Councilors
Cao Gangchuan, Chen Zhili, Hua Jianmin, Tang Jiaxuan, Zhou Yongkang

Secretary General
Hua Jianmin

Offices of the State Council*
Foreign Affairs Office Liu Huaqiu
Legislative Affairs Office Cao Kangtai

MINISTRIES AND MINISTRY-LEVEL ORGANIZATIONS

Commission for Science, Technology, and Industry for National Defense Zhang Yunchuan	Ministry of Culture Sun Jiazheng	Ministry of Justice Zhang Fusen	Ministry of Railways Liu Zhijun	State Auditing Administration Li Jinhua	China Insurance Regulatory Commission Wu Dingfu
Ministry of Agriculture Du Qinglin	Ministry of Education Zhou Ji	Ministry of Labor and Social Security Zheng Silin	Ministry of Science and Technology Xu Guanhua	National Development and Reform Commission Ma Kai	China Securities Regulatory Commission Shang Fulin
Ministry of Civil Affairs Li Xueju	Ministry of Finance Jin Renqing	Ministry of Land and Natural Resources Sun Wensheng	Ministry of State Security Xu Yongyue	State Ethnic Affairs Commission Li Dezhu	General Administration of Press and Publications Shi Zongyuan
Ministry of Commerce Bo Xilai	Ministry of Foreign Affairs Li Zhaoxing	Ministry of National Defense Cao Gangchuan	Ministry of Supervision Li Zhilun	State Population and Family Planning Commission Zhang Weiqing	State Administration for Industry and Commerce Wang Zhongfu
Ministry of Communications Zhang Chunxian	Ministry of Health Wu Yi	Ministry of Personnel Zhang Bailin	Ministry of Water Resources Wang Shucheng	Administration of Quality Supervision, Inspection, and Quarantine Li Changjiang	State Asset Supervision and Administration Commission Li Rongrong
Ministry of Construction Wang Guangtao	Ministry of Information Industry Wang Xudong	Ministry of Public Security Zhou Yongkang	People's Bank of China Zhou Xiaochuan	China Banking Regulatory Commission Liu Mingkang	State Environmental Protection Administration Xie Zhenhua

OTHER KEY GOVERNMENT AGENCIES*

China Post** Liu Andong	National Tourism Administration He Guangwei	State Electricity Regulatory Commission Chai Songyue
Development Research Center of the State Council Wang Mengkui	State Administration of Foreign Exchange^ Guo Shuqing	State Forestry Administration Zhou Shengxian
General Administration of Civil Aviation of China (CAAC) Yang Yuanyuan	State Administration of Radio, Film, and Television Xu Guangchun	State Intellectual Property Office Wang Jingchuan
General Administration of Customs Mou Xinsheng	State Administration of Taxation Xie Xuren	State Sports General Administration Yuan Weimin
National Bureau of Statistics Li Deshui	State Administration for Religious Affairs Ye Xiaowen	Xinhua News Agency Tian Congming
	State Food and Drug Administration Zheng Xiaoyu	

Sources: US-China Business Council files, *China Directory 2004*

*These listings are not meant to be comprehensive

**Under the authority of MII

☐ Not included in the list of 28 ministry-level bodies released at the 2003 National People's Congress

^Reports to PBOC

Executive Branch

- Chief of State
  - President Hu Jintao
  - Vice President Zeng Qinghong
- Head of Government
  - Premier Wen Jiabao
- The State Council (compare to USA cabinet)
  - Appointed by the National People's Congress
  - Supervises Government Bureaucracy & Carries Out Administrative Functions

Legislative Branch

- National People's Congress (NPC)
- Unicameral Legislature
- 2,985 Representatives
- Elected by Municipal, Regional and Provincial People's Congresses
- Serve 5-year Terms
- Under Constitution NPC Is the Supreme Source of Law in China -- In Practice NPC Largely Follows the Direction of the Communist Party Leadership

Judicial Branch$_1$

- The Supreme People's Court
  - Highest appeals court
  - Supervises administration of Local and Special People's Courts
  - Judges appointed by the National People's Congress

Judicial Branch$_2$

- Local People's Courts
  - handle criminal and civil cases
  - divided into three levels:
  - higher courts for the provinces, autonomous regions, special municipalities;
  - intermediate courts for the prefectures, autonomous prefectures, autonomous prefectures
  - basic courts at the level of autonomous counties, towns, and municipal districts
- Special People's Courts
  - primarily handle special jurisdictions (military, martime, and railway transport)

Economic Overview

- Economic Reforms Launched in 1978
- By Deng Xiaoping
- Fundamentally Changed China & its Global Economic Role
- China GDP Quadrupled Since 1978

Gross Domestic Product

- 2003 GDP Grew at 9.1 %
  - Highest of World's Major Economies
  - Compare: USA GDP Grew at 3.1 %
- $6.436 Trillion -- Purchasing Power Parity Basis (PPP)
  - 2nd in world to USA
- $1.409 Trillion – Exchange Rate Basis
  - 7th in world
- $5,000 Per Capita GDP (PPP basis)
  - 122 Out of 230 World Economies.

(Source: CIA Fact Book 2004)

Composition of the Economy

Sector Share of GDP in 2003

- Agriculture: 14.8 %
- Industry: 52.9 %
- Services: 32.3 %

Sector Share of Labor Force (778.1 mil)

- Agriculture: 50 %
- Industry: 22 %
- Services: 28 %

Market Potential

- **By 2005, 13 % of Urban Families (70+ Million People) Will Enter Middle Class**
- **By 2010, 25 % (170 Million)**
  (Source: *China's Consumer Market to Embrace a New Round of Boom*, China Qiao Wang, available at http://www.hslmw.com/node2/node116/node.)
- **2002 – 2003 Industrial Production Growth Rate = 30.4 %**

Market Potential
Examples

- *Auto*
  - **Auto Market Expanding at Average Annual Rate of 50 % in Developed Coastal Areas**
    (Source: *The Domestic Demand of the Chinese Consumer Market Expected to Expand: State Information Center*, Sina Financial News (9 July 2004), http://finance.sina.com.cn/g/20040709/175886159.shtml)
  - **70+ % of Adults in Beijing, Shanghai & Guangzhou Plan to Buy Car During 2002-2007**
    (Source: *Crouching Tiger, Hidden Markets: Tapping China's Consumer Potential*, China Online (Dec 1, 2003), available at http://www.chinaonline.com/commentary_analysis/c03120140.asp)
- *Housing*
  - **Sales in Beijing, Shanghai & Guangzhou Growing at 40+ % Per Yr**
    (Source: *Crouching Tiger, Hidden Markets: Tapping China's Consumer Potential*, China Online (Dec 1, 2003), available at http://www.chinaonline.com/commentary_analysis/c03120140.asp)

Banking System

- China Banking Regulatory Commission
  - Supervise and Regulate China's Banking Industry
- Central Bank - People's Bank of China
  - Currency Policy Maker
- Commercial Banks
  - 4 State-owned Banks - As of June 2004 Owned:
    - RMB 16.1 Trillion in Assets, 54.1 % of Total China Bank Assets
    - 59 % of China Banking Deposits & 54 % of all Loans
  - Shareholding Banks
  - Foreign Banks
- Policy Banks
  - Lends to Key Sectors According to National Industrial Policy
- Non-bank Financial Institutions
  - Trust & Investment Companies, Securities Trading, Financial Companies, Credit Cooperatives, Insurance, Etc.

Banking System

Central bank:

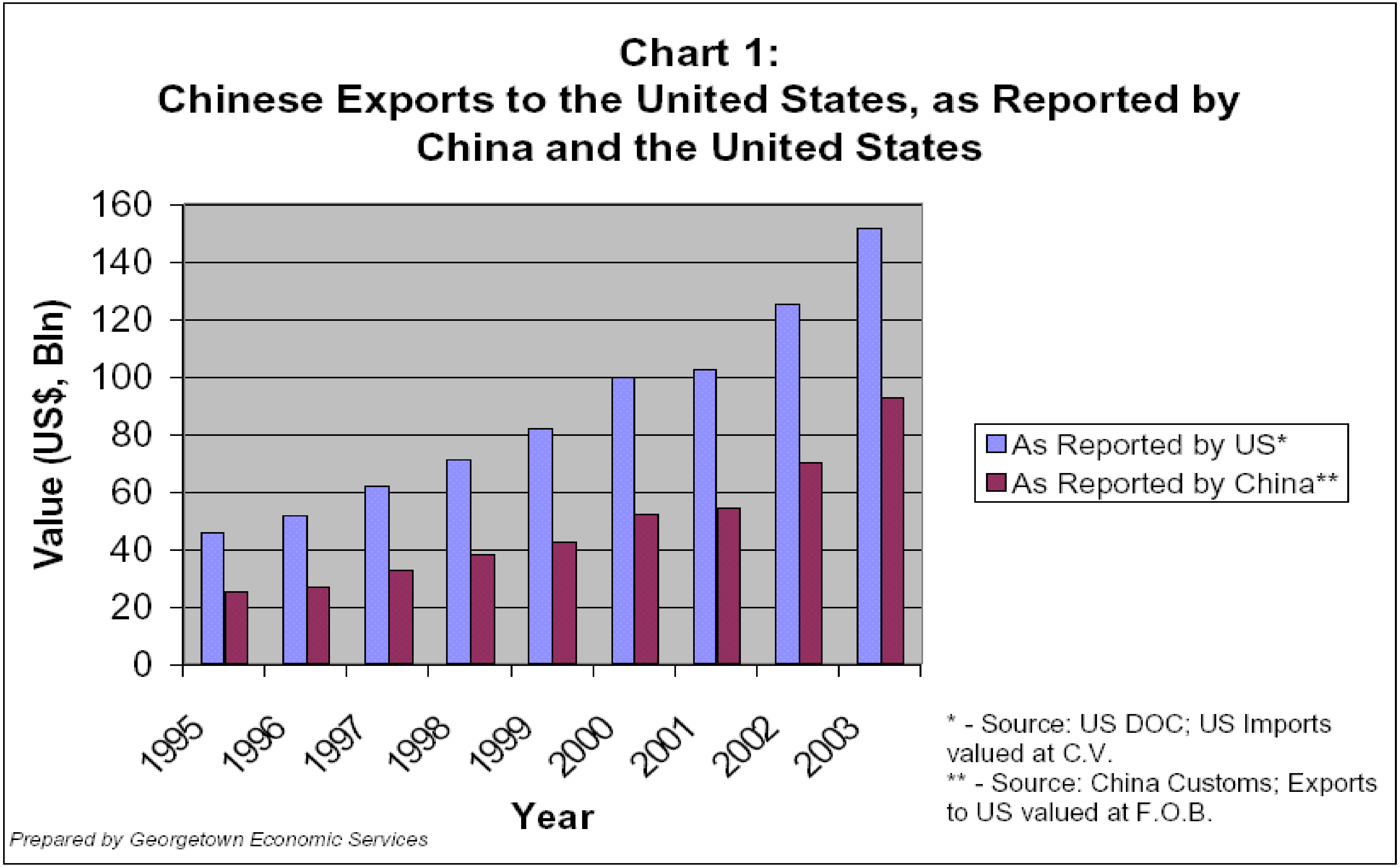
People's Bank of China

China Banking Regulatory Commission (CBRC)

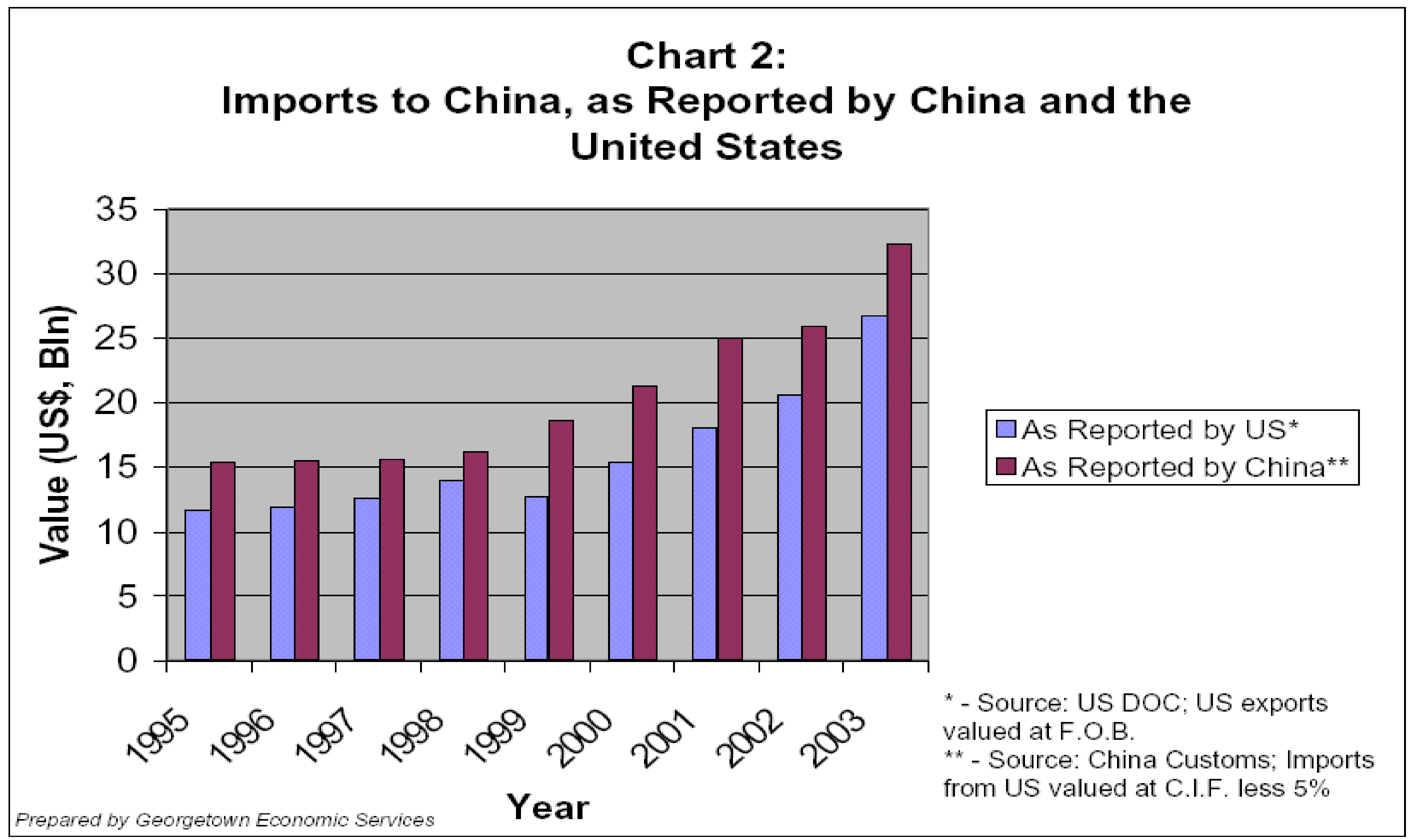
- Commercial Banks
  - Four State-owned Commercial Banks
    - China Construction Bank
    - Bank of China
    - Industrial and Commercial Bank of China
    - Agricultural Bank of China
  - Shareholding Commercial Banks
  - Foreign Commercial Banks
- Policy Banks
  - China Development Bank
  - Agricultural Development Bank of China
  - Import and Export Bank of China
- Non-bank financial institutions

Source: Compiled from *Chinese Financial System and Foreign Exchange*, Invest in China, http://www.fdi.gov.cn/lteconomy/index.jsp?currentPage=1&category=0202&app=000000 00000000000005

US-China Trade Data



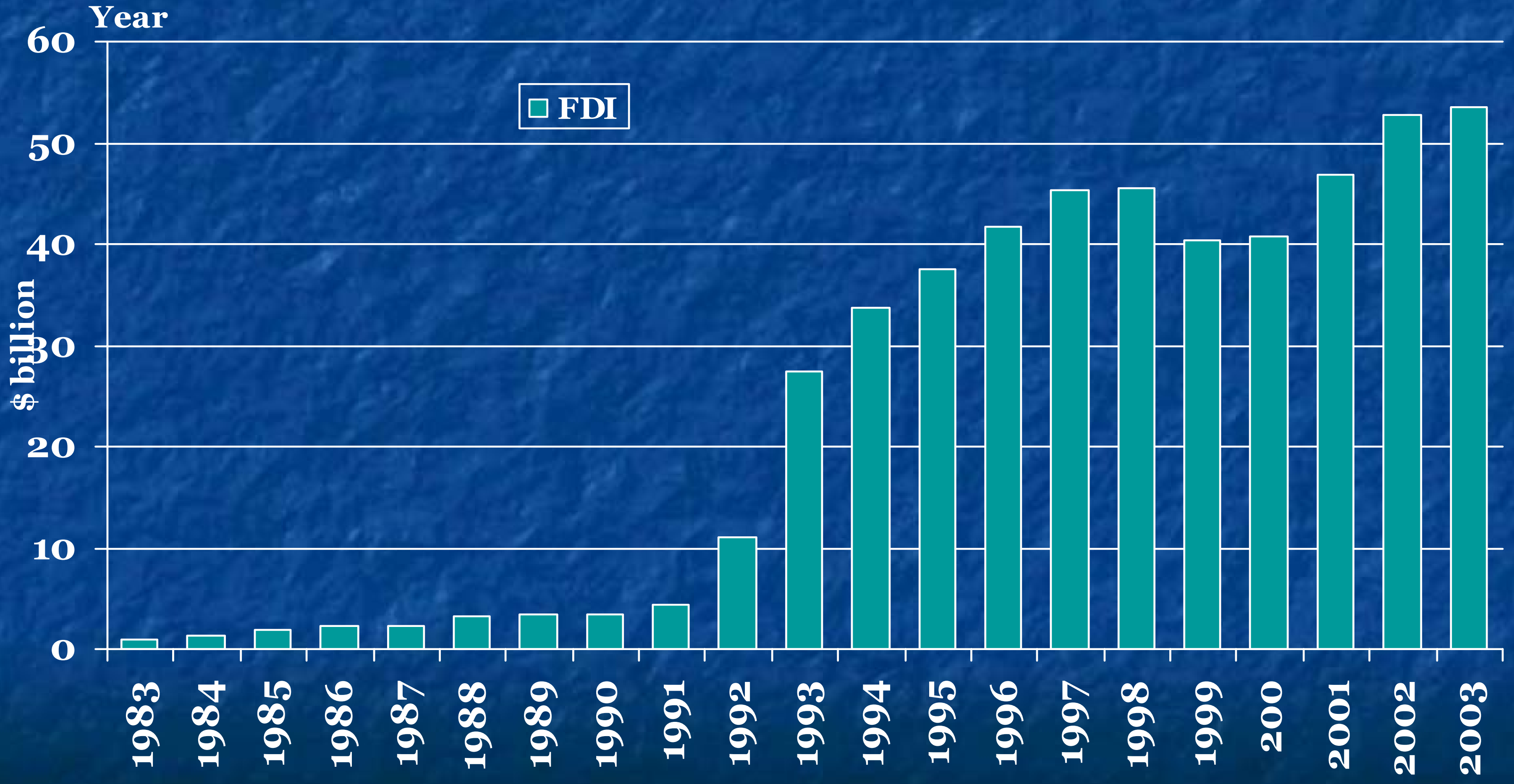
US-China Trade Data$_2$



Foreign Direct Investment

- $53 billion FDI in 2003 -- compared to $40 billion FDI in the U.S. (OECD)
- $115.07 billion contractual foreign investment reached, an increase of 39.03 percent compared to 2002.
- In 2003, China approved 41,081 foreign funded firms, an increase of 20.22 percent from 2002, and
- By the end of 2003, China had approved 465,227 foreign funded companies, with a contractual investment totaling $943.13 billion.

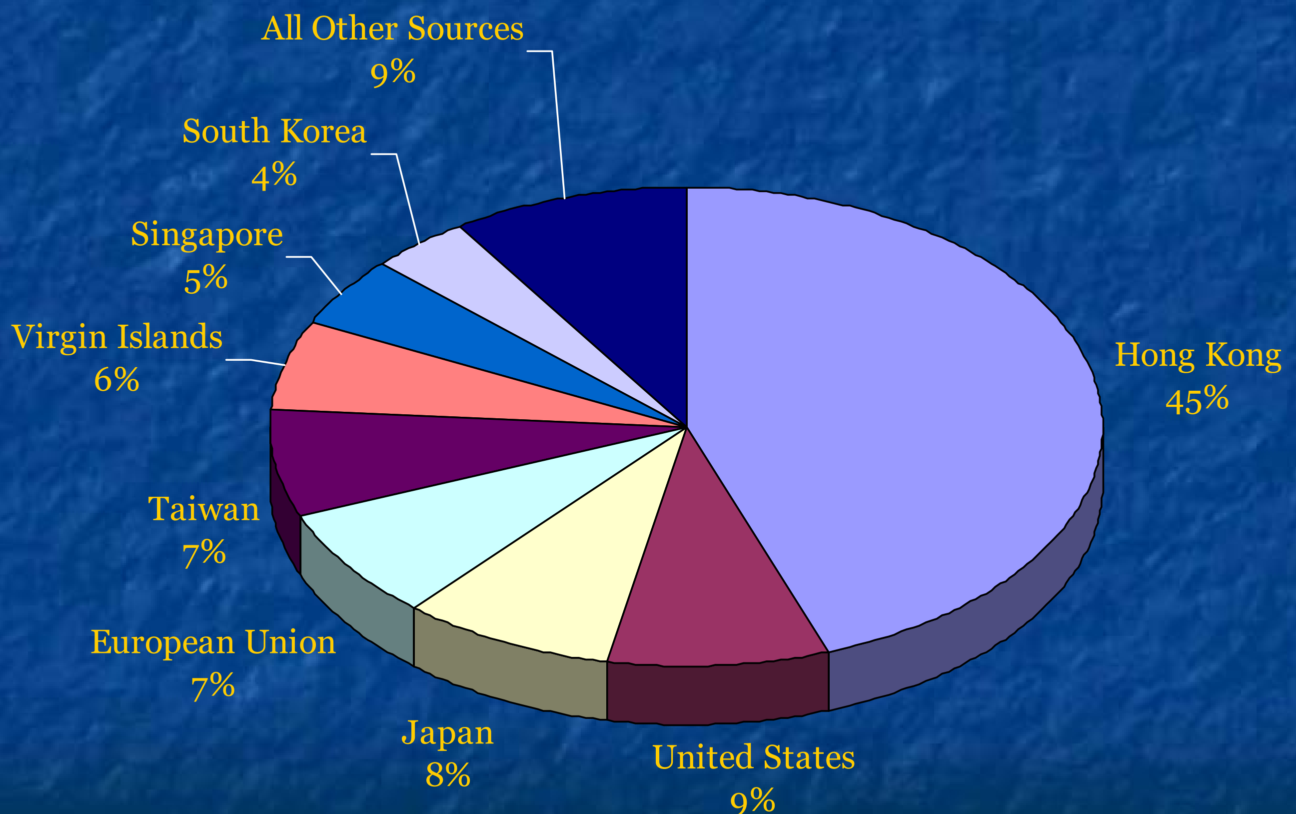
Foreign Direct Investment in China from 1983 to 2003



Source: The Ministry of Commerce of China, FDI Statistics.

Major Foreign Investors in China

China's Cumulative FDI by Top Source Economies for 2003



Foreign Direct Investment in Hong Kong

- 2002: US$9.7 billion
- 2003: US$13.6 billion (40% increase)
- 2004 1st half: US$13.8 billion (already more than 2003)
- Increase in FDI in 2003-2004 may be due to the signing of CEPA (China-HK FTA) in June 2003

Sources: *HK still a magnet for investors*, HK Government News Net (9 Sep 2004), available at http://www.news.gov.hk/en/category/businessandfinance/040923/html/040923en03001.htm and *FDI in HK increased dramatically for the first half of 2004*, Financial News (8 Oct 2004), available at http://www.financialnews.com.cn/gjgat/200410080070.htm

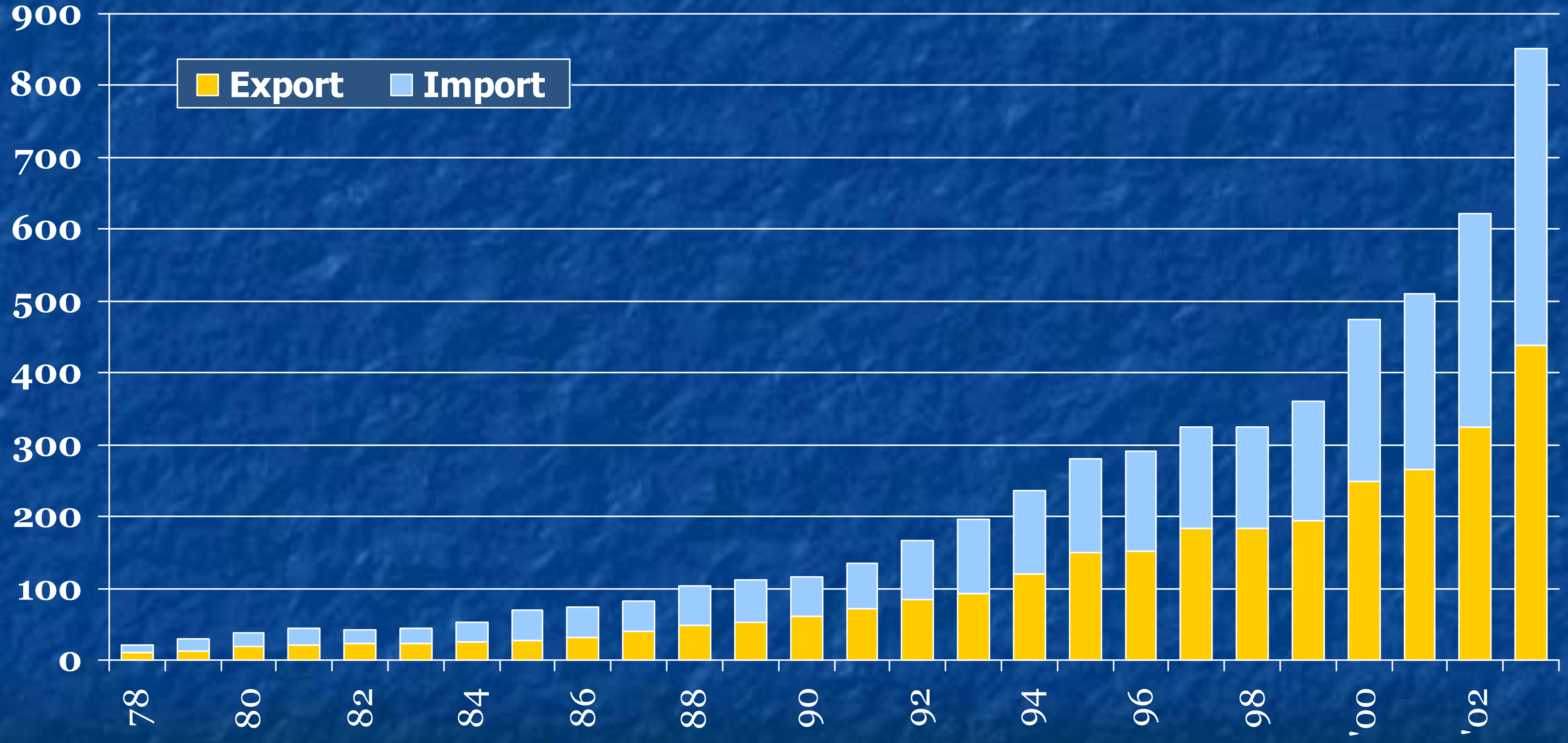
Foreign Trade

- Chinese share of and influence on world trade has been increasing rapidly.
- In 1980, China's foreign trade was $20.64 billion, ranking China as the 32nd largest trading nation in the world.
- In 2003, Chinese foreign trade reached $800 billion, which made China the fourth largest country in the world trade, if the EU is treated as single entity.
- Within a decade, China will likely eclipse Japan and Germany to become the 2nd largest country in total foreign trade.

China's Trade Relations with the US and the World:

Significance of China's WTO Accession and Commitments

Chinese Foreign Trade Development
from 1978 to 2003



Source: The Ministry of Commerce of China, Trade Statistics.

World Exports and Imports for Top-Traders, Annual 2002

Rank	Exporter	Billions US$s	Rank	Importer	Billions US$s
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1	United States	$ 693.9	1	United States	$ 1,202.4
2	Germany	$ 613.1	2	Germany	$ 493.7
3	Japan	$ 416.7	3	Japan	$ 345.3
4	France	$ 331.8	4	France	$ 337.2
5	**China**	$ 325.6	5	United Kingdom	$ 329.3
6	United Kingdom	$ 279.6	6	**China**	$ 295.2
7	Canada	$ 252.4	7	Italy	$ 243.0
8	Italy	$ 251.0	8	Canada	$ 227.5
9	Netherlands	$ 244.3	9	Netherlands	$ 219.8
10	Belgium	$ 214.0	10	Hong Kong	$ 207.2

Excluding Intra-EU Trade

1	Extra-EU	$ 939.8	1	United States	$ 1,202.4
2	United States	$ 693.9	2	Extra-EU	$ 933.1
3	Japan	$ 416.7	3	Japan	$ 337.2
4	**China**	$ 325.6	4	**China**	$ 295.2
5	Canada	$ 252.4	5	Canada	$ 227.5

Source: WTO, International Trade Statistics, 2003.

China's Trade Relations with the US and the World

Significance of China's WTO Accession

- Importance of the WTO Accession Process:
  - WTO membership involves both rights and obligations.
  - Generally, WTO accession means the acceding country has already conformed its trade regime to WTO requirements (e.g., MFN and national treatment; IPR; SPS; standards, etc.).
  - Typically, the accession process allows Members to understand the acceding country's trade regime and to see that necessary changes are made before accession.

China's Trade Relations with the US and the World

Significance of China's WTO Accession

- The People's Republic of China became the 143rd member of the World Trade Organization (WTO) on December 11, 2001.

- China's entry into the WTO is important because:

  - China's economy can be better integrated into the world economy within a predictable rules-based trading system overseen by the WTO.

  - US and other WTO Members gained greater and fairer access to the Chinese market for both goods and services.

China's Trade Relations with the US and the World

Significance of WTO Accession

- China's WTO Accession:
  - China's accession process extended over 15 years, during which time China made many changes to its economic system and trade regime.
  - However, by the time of accession, China still was not in full compliance with WTO requirements.
  - As a condition to China's early entry into the WTO before all necessary changes were made, China agreed to detailed and wide-ranging commitments to reform its trade regime and liberalize market access during a transitional period.

China’s Trade Relations with the US and the World

Significance of WTO Accession

- China’s WTO Accession:
  - China also agreed that other WTO members could use certain remedial mechanisms over a transitional period to address injury or market disruption to their domestic industries caused by import surges from China following China’s entry into the WTO.
  - China’s accession agreement was unprecedented in terms of its length, complexity, range of issues that required specific commitments, and number of exemptions allowed China.
  - For more detailed information on China’s accession:
    - *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001)
    - *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001)

China's Trade Relations with the US and the World

China's WTO Commitments

- In addition to 685 trade regime commitments, China also made specific commitments to provide greater market access to goods and services of other WTO Members.

- <u>Goods</u> - Tariff and services schedules are generally the heart of accession commitments since existing WTO Members have already assumed wide-ranging commitments which apply to all WTO Members and expect significant market access as the "price" of admission

- <u>Services</u> - China made both comprehensive and selective services commitments in the following nine areas: business; communication; construction and engineering; distribution; education; environment; financial; tourism and travel; and transport. China made no commitments with respect to three services sectors: health; recreation, cultural, and sporting; and "other"

China’s Trade Relations with the US and the World

China’s WTO Commitments

- The GAO categorized China’s trade regime commitments into seven basic types:
  - Definitional - use a certain type of term or meaning in commitments and regulations
  - Reporting - report certain information to the WTO
  - Transparency - make trade regime more open and accessible
  - Laws & Regulations - create, modify, or repeal existing laws or regulations to bring itself into conformity with WTO requirements

China's Trade Relations with the US and the World

China's WTO Commitments

- The GAO categorized China's trade regime commitments into seven basic types:
  - <u>Guidance</u> - implement certain commitments by means of a specific procedure or process
  - <u>Adherence to WTO</u> - confirm or reiterate adherence to separate WTO obligations or agreements
  - <u>Non-discrimination</u> - confirm or reiterate adherence to the primary WTO principles of national treatment and most favored nation (MFN).

China's Trade Relations with the US and the World

China's WTO Commitments

- Other specific commitments include:
  - <u>Dual pricing</u> - elimination of dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export
  - <u>Price control</u> - will not be used for purposes of affording protection to domestic industries or services providers
  - <u>Trading Rights</u> - Within three years of accession all enterprises will have the right to import and export all goods and trade them throughout the customs territory with limited exceptions
  - <u>Subsidies</u> - eliminate any export subsidies; phase out certain subsidy programs, including those to certain state-owned enterprises operating at a loss

China's Trade Relations with the US and the World

China's WTO Commitments

- Other specific commitments include:
  - State Trading - restrictions on foreign companies would be eliminated or eased after a 3-year phase-out period
  - Transitional Safeguard Mechanism – during 12-year period after accession there will be a special Transitional Safeguard Mechanism in cases where imports of products of Chinese origin cause or threaten to cause market disruption to the domestic producers of other WTO members.
  - Import Restriction Measures - phase out prohibitions, quantitative restrictions or other measures maintained in WTO-inconsistent manner
  - Bound Tariff Levels - average bound tariff level will decrease to 15% for agricultural products (based on a range 0 to 65%) and to 8.9% for industrial goods (based on a range of 0 to 47%)

China's Trade Relations with the US and the World

China's WTO Commitments

- <u>Textiles</u>
  - Upon accession, China agreed to become a party to the Agreement on Textiles and Clothing, subject to its rights and obligations.
  - As for all WTO members, quotas on textiles will end at 31 December 2004, but there will be a safeguard mechanism in place until the end of 2008 permitting WTO Member Governments to take action to curb imports in case of market disruptions caused by Chinese exports of textile products.

China's Trade Relations with the US and the World

China's WTO Commitments

- <u>Agriculture</u>
  - Limitation on subsidies for agricultural production to 8.5% of the value of farm output; China also agreed to apply the same limit to subsidies covered by Article 6.2 of the Agriculture Agreement.
  - China agreed to eliminate quotas and implement a system of tariff rate quotas intended to provide greater market access for certain bulk commodities.
- <u>Intellectual property rights</u>
  - In accordance with the WTO TRIPS Agreement, China agreed to adhere to internationally-accepted norms regarding protection and enforcement of intellectual property rights.

China's Trade Relations with the US and the World

China's WTO Commitments

- <u>Services</u> – Telecoms
  - Foreign service suppliers permitted to establish joint venture enterprises, without quantitative restrictions, and provide services in several cities. Foreign investment in the joint venture shall be no more than 25%.
  - Within one year of accession, the areas expand to include services in other cities and foreign investment shall be no more than 35%.
  - Within three years of accession, foreign investment shall be no more than 49%.
  - Within five years of accession, there will be no geographic restrictions.

China's Trade Relations with the US and the World

China's WTO Commitments

- Services – Banking
  - Upon accession, foreign financial institutions would be permitted to provide services in China without client restrictions for foreign currency business.
  - For local currency business, within two years of accession, foreign financial institutions would be permitted to provide services to Chinese enterprises.
  - Within five years of accession, foreign financial institutions would be permitted to provide services to all Chinese clients.

China's Trade Relations with the US and the World

China's WTO Commitments

- Services – Motor vehicle Financing:
  - Upon accession, China agreed to open up motor vehicle financing to foreign non-bank financial institutions.
- Services - Express Delivery:
  - China agreed to gradually increase stake allowed foreign express delivery companies in joint ventures, with wholly-foreign-owned subsidiaries allowed within four years of accession.

China's Trade Relations with the US and the World

China's WTO Commitments

- <u>Services</u> - Insurance:
  - Foreign non-life insurers would be permitted to establish as a branch or as a joint venture with 51% foreign ownership.
  - Within two years of accession, foreign non-life insurers would be permitted to establish as a wholly-owned subsidiary.
  - Upon accession, foreign life insurers would be permitted 50% foreign ownership in a joint venture with the partner of their choice.
  - For large scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance, upon accession, joint ventures with foreign equity of no more than 50% would be permitted
  - Within three years of accession, foreign equity share shall be increased to 51%.
  - Within five years of accession, wholly foreign-owned subsidiaries will be permitted.

China's Trade Relations with the US and the World

China's Compliance With WTO Commitments

- The value of China's WTO commitments to other Members can be realized only if China complies.
- As part of China's accession, the WTO established an annual "Transitional Review Mechanism" (TRM) to measure China's progress in complying with its WTO commitments.

China's Trade Relations with the US and the World

WTO's Transitional Review Mechanism

- TRM was established because Members wanted to monitor progress of China's WTO compliance over a transitional period.
- TRM began in 2002 and occurs for 8 consecutive years with one final review in the 10^{th} year following China's WTO accession.
- TRM is unique to China.
- Article 18 of the Protocol details TRM requirements/procedures.
  - China must submit certain information to 16 WTO subsidiary bodies, who conduct a review China's implementation of WTO commitments.
  - Other Members also may participate by submitting questions to China.
  - The 16 subsidiary bodies submit results of their review to relevant WTO councils, which in turn report to the General Council.

China's Trade Relations with the US and the World

WTO's Transitional Review Mechanism
Progress achieved and problems encountered

- To date, there have been 2 TRM reviews and 3rd is ongoing.
- TRM reports of the General Council have merely been a compilation of subsidiary body reports. GC has not issued a separate evaluation or made any recommendations to China.
- U.S., EU, Japan and other Members had hoped that TRM would be a robust process with questions, written answers, supplements, etc.
- Unfortunately, TRM has not been as fruitful as hoped because actions or non-actions by China have prevented an effective process.

China's Trade Relations with the US and the World

WTO's Transitional Review Mechanism
Progress achieved and problems encountered

- Problems encountered in 1st TRM:
  - China interpreted Art. 18 requirements literally.
    - China did not agree to early TRM meetings and blocked TRM discussion in regular WTO committee meetings. This was unprecedented at the WTO.
    - China did not provide written responses or agree to Q&A process.
    - China did not agree to have committee/council document go review of topics identified.
  - Because they work on consensus, TRM committees did not reach any conclusions or make any recommendations.

China's Trade Relations with the US and the World

WTO's Transitional Review Mechanism
Progress achieved and problems encountered

- In 2nd TRM, China again refused to provide written answers.
  - However, China regularly provided a copy of their representative's statement at the end of committee meetings.
- China's behavior in the 1st TRM effectively lowered expectations of WTO Members for the 2nd TRM process.
- U.S. China Economic & Security Review Commission found:
  - "China has frustrated the effectiveness of the WTO's Transitional Review Mechanism (TRM), thereby preventing it from becoming a robust mechanism for assessing China's compliance and for placing multilateral pressure on China to address shortfalls."

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance

- Congress directed USTR to submit an annual report to Congress on China's WTO compliance.
  - To date, USTR has issued 2 reports - December 2002 and 2003.
- Congress also created 2 commissions that, in part, monitor the progress of China's compliance with WTO obligations. Each commission issues annual reports.
  - U.S-China Economic and Security Review Commission (USCC)
  - Congressional-Executive Commission on China (CECC)

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance Commitments achieved so far

- In many respects, China has worked diligently to comply with its WTO commitments. Many obligations have been implemented. For example:
  - China has generally implemented its tariff reduction commitments in a timely manner.
  - China has made many of its law WTO-consistent.
  - China has eased geographic restrictions on operations of foreign financial services companies.

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance
Commitments that have not been completed or fulfilled to date

- However, in other areas, China has not reached full compliance.
- China's WTO compliance problems seem to fit several categories.
  - Some problems reflect difficulties with meeting timelines rather than lack of desire/willingness to make the changes.
  - Some problems reflect internal problems within the Chinese government in getting ministries to make changes (e.g., Ag TRQs and delays in financial services).
  - Some problems reflect infrastructure needs or longer-term educational or normative behavior change needs (e.g., IPR).

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance
Commitments that have not been completed or fulfilled to date

- **USTR's 2003 China WTO compliance report identified areas where China failed to fully meet its WTO commitments or imposed new or additional trade barriers, including the following:**
  - **Agriculture/TRQs on bulk Ag** - problems w/ sub-quotas, import licensing, allocation, delayed implementation
  - **Services** – late/delayed implementation; high capitalization requirements above international norms
  - **Auto financing** - 2 years late in implementing commitment to open sector
  - **IPR enforcement** - continued rampant infringement
  - **Trading rights** - continued restrictions
  - **Distribution rights** - potential restrictions on ability to sell imported/China-made autos from same location

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance
Commitments that have not been completed or fulfilled to date

- **Subsidies** - continued direct and indirect subsidies (including export subsidies) to Chinese producers
- **SPS** – new requirements on seafood; threatened ban on soybeans
- **Customs** - continued use of inaccurate valuation methods
- **VAT** - discriminatory tax on semiconductors, fertilizer, and other products
- **Telecom standards** – e.g., mandatory WiFi encryption standards different from international standard
- **China Compulsory Certification (CCC) mark** - certification process is duplicative and discriminatory
- **Transparency** – uncertainty/lack of uniformity; limited opportunity to comment on proposed laws

China's Trade Relations with the US and the World

U.S. Review of China's WTO Compliance
Commitments still upcoming

For a number of its WTO commitments, China was allowed a phase-in period until full compliance. Commitments re the following areas are due by the dates indicated:

- **December 11, 2004:**
  - Trading rights; Distribution Services (commission agents, wholesale trade, retailing, franchising); Certain Telecom Services; Packaging Services; Maintenance & Repair Services; Rental & Leasing Services; Construction and Related Engineering Services; Banking Services; Securities Services; Insurance Services; Travel Agency and Tour Operator Services; Rail Transport Services; Road Transport Services; Storage and Warehousing Services; Designated trading
- **January 1, 2005:**
  - Agricultural TRQs; Non-tariff barriers; State trading in silk
- **December 11, 2005:**
  - Auto investment policies; Hotel and Restaurant Services; Advertising Services; Technical Testing & Analysis Services; Freight Forwarding Agency Services; Banking Services; Courier Services
- **January 1, 2006:**
  - Industrial TRQs
- **December 11, 2006:**
  - Banking Services; Architectural Services; Certain Telecom Services; Distribution Services (commission agents, wholesale trade, retailing); Insurance Services
- **December 11, 2007:**
  - Travel Agency and Tour Operator Services; Rail Transport Services; Taxation Services; Management Consulting Services; Certain Telecom Services
- **January 1, 2011:**
  - Tariffs

U.S. China Bilateral Relations

U.S.-China Bilateral Relations

- In addition to U.S. efforts (both unilateral and at the WTO) to monitor and encourage China's WTO compliance, the U.S. maintains an active relationship with China involving both formal high-level meetings and informal discussions.
- There are three formal means through which the U.S. and China conduct bilateral discussions:

  (1) the Joint Commission on Commerce and Trade (JCCT),

  (2) the Joint Economic Commission

  (3) the Trade Dialogue
- The Commerce Department chairs meetings of the JCCT and the Treasury Department conducts meetings of the Joint Economic Commission on financial issues with the Chinese Ministry of Finance.

U.S.-China Bilateral Relations

- Established in 2003, the Trade Dialogue provides a forum for U.S. economic and trade agencies and their counterparts from the Ministry of Commerce and relevant other Chinese agencies to discuss WTO compliance and other trade matters.
- The Trade Dialogue meetings, two of which were held in 2003, are used to communicate specific trade concerns and can serve as an early warning mechanism for emerging trade disputes.

U.S.-China Bilateral Relations

Status of U.S.-China trade relations

- Over the past 25 years, the U.S.-China trade relationship has grown to be an important one for both countries
  - China is now the third largest trading partner for the U.S., surpassing Japan in 2003.
  - In 2003, China was the 2nd largest exporter to the US (behind Canada) and the 6th largest purchaser of U.S. exports (behind Canada, Mexico, Japan, the UK, and Germany)
  - The U.S. is China's 2nd largest trading partner overall, the number one destination for exports from China, and the sixth largest supplier of imports into China

U.S.-China Trade Balance 1985 - 2003

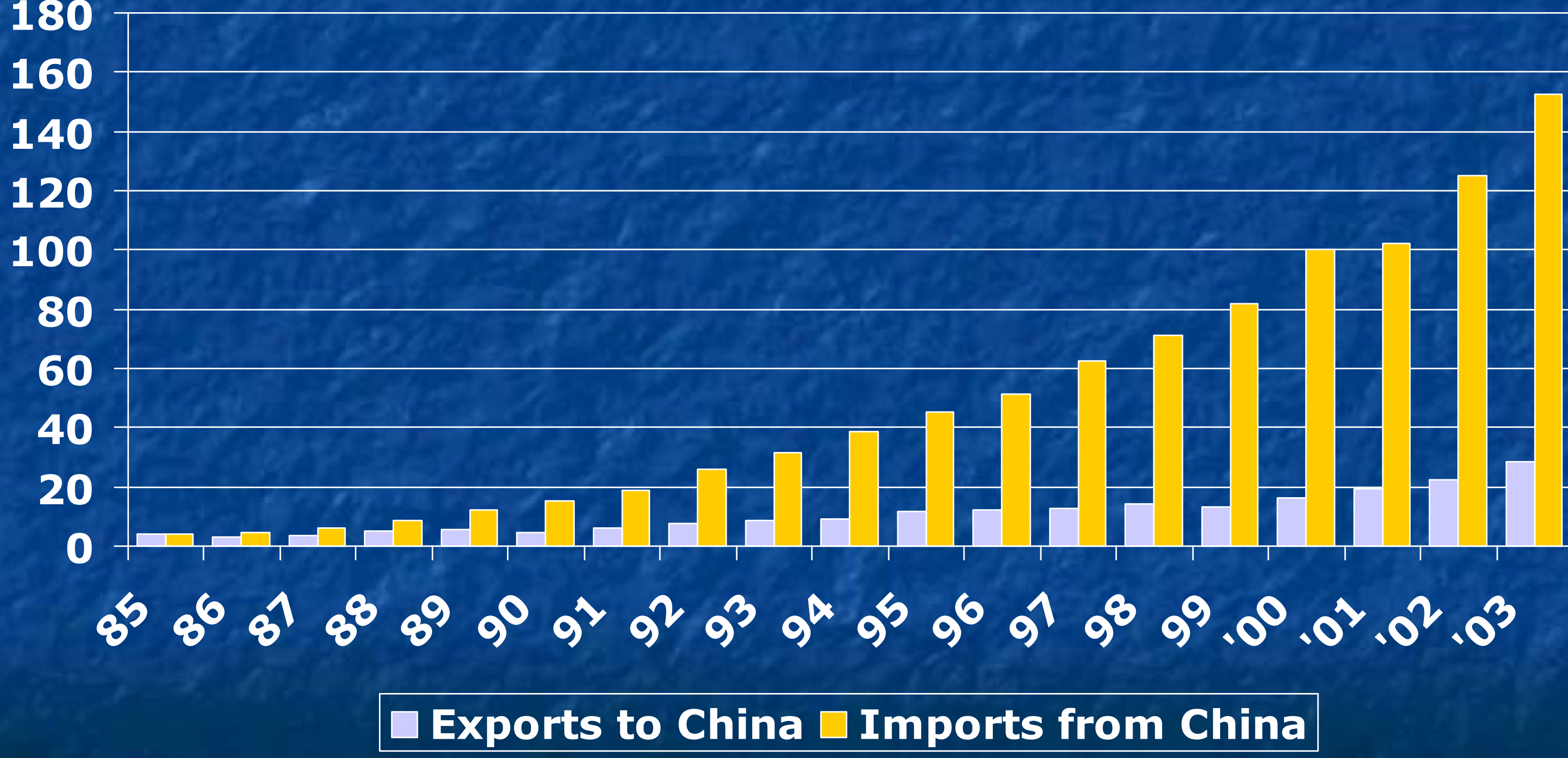
millions of $US

Year	U.S. Exports to China	U.S. Imports from China	Current U.S. China Trade Bal.	Annual % Change: U.S. Exports to China	Annual % Change: U.S. Imports from China
1985	3,855.7	3,861.7	(6.0)		
1986	3,106.3	4,771.0	(1,664.7)	-19.4%	23.5%
1987	3,497.3	6,293.6	(2,796.3)	12.6%	31.9%
1988	5,021.6	8,510.9	(3,489.3)	43.6%	35.2%
1989	5,775.5	11,859.2	(6,083.7)	15.0%	39.3%
1990	4,775.7	15,119.9	(10,344.1)	-17.3%	27.5%
1991	6,238.1	18,855.0	(12,617.0)	30.6%	24.7%
1992	7,338.6	25,514.3	(18,175.7)	17.6%	35.3%
1993	8,619.3	31,425.4	(22,806.1)	17.5%	23.2%
1994	9,177.9	38,572.5	(29,394.6)	6.5%	22.7%
1995	11,612.5	45,370.0	(33,757.4)	26.5%	17.6%
1996	11,801.2	51,209.4	(39,408.1)	1.6%	12.9%
1997	12,533.5	61,995.9	(49,462.4)	6.2%	21.1%
1998	13,908.5	70,815.0	(56,906.5)	11.0%	14.2%
1999	12,584.9	81,522.3	(68,937.4)	-9.5%	15.1%
2000	15,335.3	99,580.5	(84,245.2)	21.9%	22.2%
2001	17,959.0	102,069.3	(84,110.3)	17.1%	2.5%
2002	20,553.0	124,795.7	(104,242.7)	14.4%	22.3%
2003	26,706.9	151,620.1	(124,913.2)	29.9%	21.5%
			Annual Average:	12.9%	23.0%
2003 7 mc	13,818.8	79,533.4	(65,714.6)		
2004 7 mc	18,872.2	102,985.2	(84,113.0)	36.6%	29.5%

U.S. Trade with China

1985 - 2003

in millions of $US



U.S.-China Bilateral Relations

Status of U.S.-China trade relations

- **Trade Balance is generally thought to be Important - At present, China has a large surplus in trade with the U.S.**
  - Large imbalances put pressure on currency values and financial borrowings but effects are complex
  - In 2003, the U.S. had a trade deficit with China totaling $124 billion (exports to China of $28.4 billion and imports from China of $152.4 billion). This was a 20.3 percent increase over the $103.1 billion deficit in 2002
  - Imports from China increased by 21.7 percent to $152.4 billion in 2003, compared to $125.2 billion in 2002.
  - China is the fastest growing export market for U.S. goods but on a much smaller scale

U.S. Trade with China - Annual 2003
HS Chapters with Greatest Trade **Deficits**

Rank	HS Chapter		U.S. Imports from China	U.S. Exports to China	Current U.S. China Trade Balance
1	84	Nuclear Reactors, Boilers, Machinery And Mechanical Appliances; Parts Thereof	29,858,638	4,230,486	-25,628,153
2	85	Electrical Machinery And Equipment And Parts Thereof; Sound Recorders And Reproducers, Television Recorders And Reproducers, Parts And Accessories	28,476,898	3,960,265	-24,516,633
3	95	Toys, Games And Sports Equipment; Parts And Accessories Thereof	16,100,790	26,081	-16,074,708
4	94	Furniture; Bedding, Cushions Etc.; Lamps And Lighting Fittings Nesoi; Illuminated Signs, Nameplates And The Like; Prefabricated Buildings	11,818,321	79,376	-11,738,945
5	64	Footwear, Gaiters And The Like; Parts Of Such Articles	10,546,440	36,433	-10,510,006
6	62	Articles Of Apparel And Clothing Accessories, Not Knitted Or Crocheted	5,478,132	3,769	-5,474,363
7	42	Articles Of Leather; Saddlery And Harness; Travel Goods, Handbags And Similar Containers; Articles Of Gut (Other Than Silkworm Gut)	4,848,697	4,350	-4,844,347
8	61	Articles Of Apparel And Clothing Accessories, Knitted Or Crocheted	3,188,629	3,993	-3,184,636
9	73	Articles Of Iron Or Steel	3,199,009	110,621	-3,088,388
10	39	Plastics And Articles Thereof	4,272,502	1,220,655	-3,051,847

U.S. Trade with China - Annual 2003
HS Chapters with Greatest Trade **Surpluses**

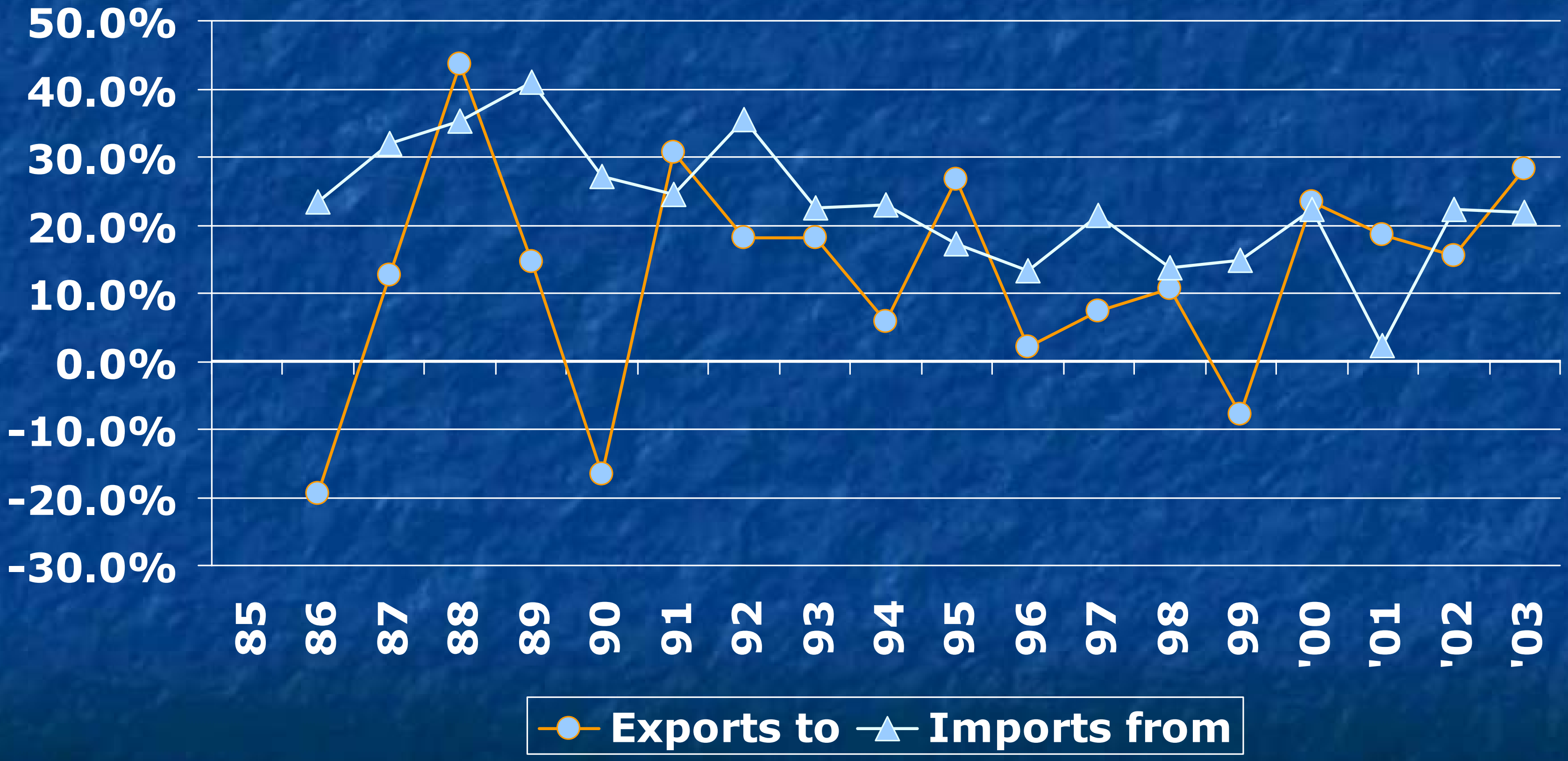
Rank	HS Chapter		U.S. Imports from China	U.S. Exports to China	Current U.S. China Trade Balance
1	12	Oil Seeds And Oleaginous Fruits; Miscellaneous Grains, Seeds And Fruits; Industrial Or Medicinal Plants; Straw And Fodder	89,483	2,876,041	2,786,558
2	88	Aircraft, Spacecraft, And Parts Thereof	62,224	2,446,922	2,384,698
3	72	Iron And Steel	221,889	1,091,232	869,343
4	47	Pulp Of Wood Or Other Fibrous Cellulosic Material; Recovered (Waste And Scrap) Paper And Paperboard	973	585,650	584,677
5	52	Cotton, Including Yarns And Woven Fabrics Thereof	181,088	741,198	560,110
6	41	Raw Hides And Skins (Other Than Furskins) And Leather	37,567	513,078	475,510
7	31	Fertilizers	56,806	457,034	400,229
8	74	Copper And Articles Thereof	212,432	599,739	387,308
9	2	Meat And Edible Meat Offal	6,179	139,949	133,770
10	21	Miscellaneous Edible Preparations	50,364	146,023	95,660

U.S.-China Bilateral Relations

Status of U.S.-China Trade Relations

- While trade flows in both directions have increased between the U.S. and China, increased U.S. imports from China make up the majority of increased bilateral trade.
- U.S. imports from China grew from 1985 to 2002 with an annual average growth rate of 23 percent.
- Although U.S. exports to China from the U.S. also expanded, the growth rate was 12.9 percent or about half the growth in imports. The much smaller export base in the U.S. means the U.S. runs an increasing trade deficit with China.
- In 2002 and 2003, the first two years of China's WTO accession, the U.S. ran a trade deficit of $103 billion and $124 billion with China, a deficit likely to grow in 2004 to over $150 billion.

U.S. Trade with China
Annual Percent Change
1985 - 2003



U.S.-China Bilateral Relations
U.S.-China JCCT discussions

- The Joint Commission on Commerce and Trade (JCCT), established in 1983, provides a formal process for the U.S. and China to meet and discuss trade issues of mutual interest and concern, generally on a yearly basis.
- The 15th session of the JCCT took place on April 21, 2004 in Washington, DC.
- The JCCT was chaired by Commerce Secretary Evans, USTR Zoellick and Chinese Vice Premier Wu Yi.

U.S.-China Bilateral Relations
U.S.-China JCCT discussions

15th Session of the JCCT

- The JCCT resulted in a number of agreements, including:
  - Set up a Working Group on NME Status and steps necessary to become a market economy
  - Greater cooperation on export controls on high-tech products
  - Upgrade textiles dialogue
  - Agreement to increase export trade promotion
  - China agreed to suspend its wireless standards for computers and mobile phones
  - China agreed to strengthen protection and enforcement of IPR Property
  - China agreed to increase agricultural transparency (biotech; TRQs; etc.)
  - China agreed to grant trading rights early and distribution rights by December 11, 2004

U.S.-China Bilateral Relations
Trade Successes & Problems with China
Successes Identified by USTR

- The U.S. has achieved a number of successes in bilateral trade relations with China but also continues to experience continuing problems with some issues.

- The USTR has identified the following issues as U.S. trade successes in dealing with China.
  - Resolution of Semiconductors VAT Dispute
  - Problem-Solving at the JCCT
  - Resolving TRQ issues re Soybeans and Cotton
  - Reducing capital requirements for Financial Services
  - Making it easier for foreign insurance companies to operate in China
  - Textiles Safeguards

U.S.-China Bilateral Relations

Trade Successes & Problems with China

Problems Identified by USTR 1 of 2

- However, problems in U.S.-China trade relations remain outstanding.
- In addition to the numerous issues raised concerning China's compliance with WTO obligations and accession commitments, among the most prominent outstanding problems are:
  - IPR protection and enforcement (discussed infra); and
  - China's currency undervaluation.

U.S.-China Bilateral Relations

Trade Successes & Problems with China

Problems Identified by USTR 2 of 2

- **Chinese Currency Issue - Most Pervasive**
  - China maintains a rigid currency peg at 8.24 RMB to the U.S. dollar.
  - Economists assert that China's currency is undervalued 25% - 75% and effectively acts as a tax on U.S. exports and a subsidy to China's exports, causing loss of U.S. and ROW manufacturing jobs.
  - Although the U.S. has urged China to move toward a flexible, market-based exchange rate regime and to reduce controls on capital flows, it has not done so to date.
  - Attempts to force the Bush Administration to affirmatively address the currency issue include:
    - The Fair Currency Alliance drafted a Section 301 petition regarding China's currency policy but did not file.
    - The China Currency Coalition filed a Section 301 petition on September 9, 2004, which the Administration rejected the same day.
    - On September 30, 2004, 30 members of the House and Senate filed another Section 301 petition on China's currency policy. The Administration has not yet made a decision on this petition.

Doing Business with China

Doing Business with China

- China is the fastest growing major economy in the world.
- Since 1978, China has actively sought foreign investment.
- More and more foreign companies are either setting up a business, outsourcing production to, or sourcing raw materials from China.

Doing Business with China

- Many foreign companies are drawn to China by the prospect of a 1.3 billion consumer market, but this number has proven unrealistic in fact.
- Income levels in China vary widely and the majority of Chinese are still living a rural life.
- But there is an attractive consumer market in China, estimated to be about 200 million consumers who have an interest in Western goods and services. (Source: Enterprise Ireland, *Doing Business in China* (2003))

US Manufacturing Investment in China

	Manufacturing Investment
1985	38
1990	138
1993	523
1995	1,263
2000	7,076
2001	7,727
2002	6,013
2003	6,791

Historical Cost - $ millions; Source: Bureau of Economic Analysis, USDOC

Golden Rules of Doing Business in China

1. Everything Is Possible.
2. Nothing Is Easy.
3. Western Business Logic Does Not Apply.
4. It Is A Fun Project If There Is No Deadline.
5. You Must Persist - Things Will Come Your Way Eventually.
6. Patience Is The Essence Of Success.
7. "You Don't Know China" Means They Disagree.
8. “New Regulation" Means They Have Found A New Way To Avoid Doing Something.
9. "Basically No Problem" Means Big Problem.
10. When You Are Optimistic, Think About Rule #2.
11. When You Are Discouraged, Think About Rule #1.

U.S. Commercial Service's 10 Tips on Doing Business in China:

- Have clear contract terms.
- Make certain your project is economically viable.
- Know your partner. Do your "due diligence" and do it well.
- Know the rules. Beware of offers to bend them in your favor.
- Search for problems before they materialize.
- Do a thorough risk analysis.
- Mind the store.
- Expect virulent competition, pricing pressure.
- Get paid.
- Watch your intellectual property rights.

Doing Business in China

Same Bed, Different Dreams

Doing Business in China

- START SMALL
- NO SECRETS
- CASH IS KING
- TRANSLATION IS THE KEY
- TRUE CONTROL
- INDIRECT AND DIRECT COSTS
- CREATIVE USE OF EXPATS
- ASSUME THAT “ACCESS TO” MAY BE A SYNONYM OF “THEFT OF”

Doing Business in China
Counterfeit Trade in China

- **World's Largest Source of Counterfeit Goods 1/4 - 1/2 of $450 Billion Sold**
  (Source: Interpol)
- **92% of All Software in China is Counterfeit**
  (Source: Business Software Alliance)
- **10% of All Pharmaceuticals - up to 60% in Developing Countries like China**
- **192,000 Persons DIED in China in 2001 From Counterfeit Pharmaceuticals**
  Source Shenzen Evening News (PRC Gov. News)

Business Landscape in China

Chinese Business Norms and Customs

- Some companies do not succeed in the Chinese market because they fail:
  - to make the right contacts
  - to properly communicate needs and expectations
  - to understand nuances of the Chinese business culture
  - to be patient

- U.S. companies need to understand some basic Chinese business customs and norms, or, in other words, Chinese business etiquette.

Business Landscape in China

Chinese Business Norms and Customs

"Guanxi" -- the Importance of Personal Relationships

- "Guanxi" refers to a "personal relationship" and an understanding of this concept is critical to succeeding within the business culture of China.
- "Guanxi" means that a company must develop a personal relationship with its Chinese business partners through which mutual trust and respect can develop.
- Companies can develop "Guanxi" by making the right contacts or connections in seeking a business partner.
- Once the appropriate contacts in China are made, it will still be necessary to have patience – Guanxi develops over time.

Business Landscape in China

Chinese Business Norms and Customs

The Concept of "Face"

- In China, "face" refers to one's image or credibility, one's prestige or esteem.
- The concept of "face" is as important in Chinese business culture as the details of an agreement and to "lose face" is a severe embarrassment.
- This means that parties generally try to interact and conduct negotiations in ways that do not result in either party losing face, even if a deal is not successfully concluded.
- Flattery is the most common form of Chinese "face giving."

Business Landscape in China

Chinese Business Norms and Customs

Other Business Customs

- It is common to present and accept a business card with two hands, and, when presented, it is polite to read the business card immediately.
- Conducting business over a meal, either lunch or dinner, is a norm.
- It is common to exchange small gifts.

Business Landscape in China

Trading Rights

- For a U.S. company doing business in China, trading rights (the right to import and export goods) are essential.
- Historically, China restricted trading rights for foreign entities.
- China committed to opening up trading rights as part of WTO accession.
- Although China was slow to extend trading rights in the initial years after accession, its revised Foreign Trade Law (July 2004) extended trading rights to wholly foreign owned enterprises in accord with its WTO trading rights commitment.

Business Landscape in China

Distribution Rights 1 of 2

- Distribution rights concern how products, made in China or imported, can be distributed in China. They are an essential issue for U.S. companies doing business in China.
- The interrelation of trading and distribution rights is fundamental, as "having rights in one area without the other does little to help a company establish an integrated supply chain logistics operation."*
- Prior to China's WTO accession, foreign firms were generally allowed to distribute only products they manufactured in China. To distribute imported goods, foreign firms had to engage local agents.
- China agreed to phase out distribution restrictions for most products within three years of WTO accession.

* Robert A. Kapp, President, U.S.-China Business Council, statement before the U.S.-China Economic and Security Review Commission (February 5, 2004).

Business Landscape in China

Distribution Rights 2 of 2

- In first two years of WTO membership, China failed to keep pace with its commitment to phase-in distribution rights.
- In April, 2004, China published new Regulations which promised to extend distribution rights to all foreign companies by December 11, 2004.
- However, the U.S. Chamber of Commerce recently noted that the new regulations failed to offer details on how existing foreign-invested companies in China can incorporate distribution services into their existing scopes of business.
- While China’s new regulations appear to comply with China's WTO commitment, China’s implementation of the new regulations will be critical to whether foreign companies receive full distribution rights.

Business Landscape in China

Protecting Intellectual Property in China 1 of 3

- Rampant intellectual property piracy/counterfeiting and China's failure to enforce intellectual property rights are among the most serious issues facing U.S. companies doing business in China.
- The rate of piracy and counterfeiting in China is enormous, estimated to be about 90% over the last 15 years for certain types of products.
- The International Intellectual Property Alliance estimates losses to U.S. companies through copyright piracy to be at least $1.8 billion annually.
- Since acceding to the WTO, China has taken some steps to decrease piracy and better enforce intellectual property rights, but unacceptably high levels of piracy and counterfeiting have continued.
- China has enacted IP laws that generally comply with WTO obligations, but China has a chronic problem in IPR enforcement.

Business Landscape in China

Protecting Intellectual Property in China 2 of 3

- As a result of the JCCT meeting in April 2004, the U.S. and China agreed to set up a working group on IPR issues and China agreed to step up its efforts at IPR enforcement, particularly by promising to:
  - reduce IPR infringement levels
  - increase criminal penalties
  - apply criminal sanctions
  - conduct nation-wide IPR enforcement actions
  - increase customs enforcement actions
  - launch an education campaign in China
- Despite the JCCT promises, many U.S. companies have commented to USTR that China has so far done little to improve IPR protections.

Business Landscape in China

Protecting Intellectual Property in China 3 of 3

- In September 2004, USTR announced that it would conduct in early 2005 an out-of-cycle Special 301 review of China's implementation of the IPR commitments announced at the JCCT meeting.
- USTR will publish a FR notice in the coming months asking for information from U.S. industries about the prevalence of IPR infringement in China and specific examples.
- In addition, on October 4, 2004, USTR announced a new coordinated government-wide initiative, the Strategy Targeting Organized Piracy (STOP), to block the importation of counterfeit and pirated goods.
- The STOP initiative is targeted at worldwide counterfeiting, but China is clearly one of the major targets of the program.

Business Landscape in China

Chinese Government Incentives for Foreign Investment

- **China has offered a variety of incentives to foreign investors since 1978, particularly in the manufacturing and electronics sectors:**
  - **five "special economic zones" (SEZs)**
  - **numerous special development zones (such as high-tech zones)**
  - **free trade zones**
  - **special status to 14 coastal cities.**

- **Special development zones focused on projects involving high-tech and export oriented investments in priority sectors:**

Transportation
Communication
Metallurgy
Energy
Construction Materials

Chemicals
Pharmaceuticals
Medical Equipment
Environmental Protection
Electronics
Machinery

Source: China Country Commercial Guide FY 2004

Economic Development Zones

Chinese Government Incentives for Foreign Investment 2 of 3

Source: http://www.1uptravel.com/worldmaps/china48html. The map is derived from Handbook of International Economic Statistics.

Business Landscape in China

Chinese Government Incentives for Foreign Investment 3 of 3

- The majority of FDI flows into China's eastern coastal provinces, known for low labor costs and export production.
- By 2002, five eastern coastal provinces receiving the most FDI:

  Guangdong (21.5%) Jiangsu (19.3%) Shandong (9%)
  Shanghai (8.1%) Fujian (7.3%)

- Incentives offered to companies that invested in designated locations included:

  Reduced corporate income tax rates Tax holidays
  Lower land-use fees Simplified entry/exit procedures

Source: China Country Commercial Guide FY 2004.

Investing in China

Investing in China

- Many U.S. companies are considering whether to invest in China by setting up a business there.
- China's significant cultural differences & complex market means companies need to thoroughly research the advantages/disadvantages of investing.
- A host of professional advisory services (consulting firms, accounting firms, etc.) can assist companies that are considering investing in China.

Investing in China

- Companies considering investing might consider the following issues:
  - How will China view the company's product or service?
  - Will any cultural differences affect that view?
  - Is there a demand in China for the company's product or service?
  - Who are the potential customers and what are the likely prospects for success?
  - Are the company's resources adequate?
  - Does the company have sufficient patience to make a long-term commitment?
  - What is the appropriate time to enter China?
  - Where should the company set up? (e.g., in a designated investment area?)
  - What capitalization is required?
  - What are the company's future budget and staffing needs?
  - Does the company need to find potential joint venture partners?
  - Has the company made appropriate Chinese contacts (government and business)?
  - Has the company done adequate due diligence re legal, tax, financial and other business issues?

Investing in China

Entry Strategy & Importance of Knowing Local Business Environment

- A PricewaterhouseCoopers survey found that knowledge of the local business environment was one of the key challenges of investing in China.
- Lack of knowledge of the local business environment:
  - A key impediment to success in China
  - "May be caused by the underestimation of the uniqueness of China"
- PricewaterhouseCoopers survey asked: "If you were asked to invest in China again, how would you react differently?"
- Three top responses were:
  - More initial planning
  - Conduct more thorough risk analysis before investing in China
  - Conduct more thorough due diligence before investing in China

Source: PricewaterhouseCoopers, *Doing Business in China: A Survey of Issues Encountered by Foreign Companies Doing Business or Investing in China* (March 2004).

Investing in China

Forms of businesses

- U.S. and other foreign companies can invest in “foreign invested enterprises” (FIEs) and “foreign enterprises” (FEs).

- The FIEs are comprised of:
  - wholly foreign-owned enterprises (WFOE)
  - Joint ventures (both equity and cooperative)
  - Holding companies
  - Foreign investment companies limited by shares

- FEs consist of:
  - Representative offices
  - Other types of arrangements.

Investing in China

Forms of businesses

- In the past, the joint venture was the dominant foreign investment vehicle.
- Wholly foreign-owned enterprise (WFOE) is now the most popular FIE.
- WFOEs constitute nearly 70% of new FDI projects approved in the first half of 2004, and 75% of investment dollars.
- Among respondents to the PricewaterhouseCoopers survey, the most popular forms of investment in China were wholly foreign owned enterprises, representative offices and equity joint ventures.

Investing in China
Forms of businesses - FIEs and FEs

- FIEs:
  - Must have at least 25% foreign ownership
  - Must contribute to the development of China's economy
  - Contract and articles of association must provide for enterprise's duration (may range from 10-30 years)
  - Can hire Chinese employees directly (w/o using government employment agencies
- FEs:
  - Those “forms of foreign companies’ activities and operations other than FIEs”
  - Include “representative offices, contracted projects and foreign companies receiving income and payments from Chinese sources other than contractual agreements”
  - “Other types of business arrangements include leasing and licensing arrangements, compensation trade arrangements, counter-trade arrangements, processing and assembly agreements, and direct sales.”

Investing in China

Wholly Foreign Owned Enterprise (WOFE)

- Governed by the Law on Sole Foreign Investment Enterprises
- Profits earned may be remitted abroad
- Not required to report production/business plans to government
- No longer must export most production, or use high technologies & advanced equipment, but China "encourages" WFOEs to do so
- WFOE application can be rejected for five reasons: (1) danger to national security, (2) violation of laws/regulations, (3) detriment to sovereignty/public interest; (4) nonconformity with requirements of national economic development; and (5) danger of environmental pollution

Sources: Ernst & Young, *Doing Business in China* (2003); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions*.

Investing in China

Equity Joint Venture (EJV) 1 of 2

- Governed by the Law on Joint Ventures Using Chinese and Foreign Investment
- Must be formed as a limited liability company and have the status of a legal entity
- Parties may include Chinese corporations, enterprises or other entities, and one or more foreign companies, enterprises or individuals
- Must meet at least one of the following requirements:
  - adopt high-technology equipment and scientific management to increase product variety, quality, output, energy or materials conservation
  - promote technological upgrades in enterprises
  - produce export-oriented products and increase foreign-currency income
  - enable the training of technical and managerial personnel

Source: Ernst & Young, *Doing Business in China* (2003)

Investing in China

Equity Joint Venture (EJV) 2 of 2

- Allowable capital contributions: cash; equipment & machinery; technology and industrial property rights; other assets
- Foreign contribution at least 25% of total registered capital (usually 50%)
- Chinese usually contribute land use rights, labor, factory buildings, raw materials
- Capital contributions can be one lump sum or installments
- Capital may be transferred to 3rd parties if other party approves
- Parties share profits & bear risks/losses according to equity contributions
- Chinese partner can assist in interacting with government, accessing labor & material supply sources and, if appropriate, accessing the domestic market

Source: Ernst & Young, *Doing Business in China* (2003)

Investing in China

Cooperative (or Contractual) Joint Venture (CJV) 1 of 2

- Governed by the Law on Sino-Foreign Cooperative Enterprises
- Based on contracts between partners
- Formed to do projects of limited duration & specific objective (e.g., construction of a building, hotel or factory)
- Must be a limited liability company and have status of a legal entity
- If not a legal entity, each party pays taxes on profits from CJV and bears own liability for debts and losses
- Approval and registration process similar to that for an EJV
- Offers greater flexibility than EJVs in structuring investment contributions b/c governed by provisions of the partners'contract

Source: Ernst & Young, *Doing Business in China* (2003)

Investing in China

Cooperative (or Contractual) Joint Venture (CJV) 2 of 2

- Investment contributions can be buildings, equipment, land-use rights, technologies, intellectual properties and other assets
- CJV parties may agree to the method and timing of profit distributions
- CJV law allows foreign partner to recover investment before JV expires
- CJVs resemble partnerships (in U.S. sense) in that:
  - CJVs do not require strict proportionality of investment terms, return on capital, governance and dividend distribution
- CJVs have never been as popular as EJVs, in part because of investors' unfamiliarity with CJVs

Sources: Ernst & Young, *Doing Business in China* (2003); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): Guide to Doing Business in China & Information on Current Economic Conditions.*

Investing in China

Chinese Holding Company (CHC) 1 of 3

- *Interim Provisions on the Setting Up of Foreign-Backed Investment Companies* (1995) permits foreign investors to form holding companies
- Intended to attract advanced technology and management expertise
- May be WFOEs or JVs that group multiple investments together
- Must be limited liability form; US$30 million minimum registered capital
- Contributions (unlike JVs/WFOEs) must be cash; no injection of assets
- Foreign investors' contribution must be in a freely convertible currency;
- Chinese investors may contribute in RMB
- Capital must be fully paid up within 2 years of business license issuance
- Minimum capital requirements normally make CHCs suitable only for corporations with several sizeable investments to manage

Source: Ernst & Young, *Doing Business in China* (2003)

Investing in China

Chinese Holding Company (CHC) 2 of 3

- Foreign investor requirements to be deemed creditworthy:
  - In year preceding application, investor's total assets must be no less than US$400 million, must have invested more than US$10 million in an enterprise in China and must have more than 3 of its investment proposals approved; or
  - Investor must have invested more than US$30 million in 10 or more enterprises in China engaged in production or construction of infrastructure facilities
- Chinese investors must meet the following requirements:
  - Good creditworthiness; and
  - Total assets no less than RMB 100 million
- Minimum capital requirements normally make CHCs suitable only for corporations with several sizeable investments to manage

Sources: Ernst & Young, *Doing Business in China* (2003); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): Guide to Doing Business in China & Information on Current Economic Conditions.*

Investing in China

Chinese Holding Company (CHC) 3 of 3

- CHCs may engage in the following functions and activities:
  - Support various lower-tier entities
  - Act as centralized distributing/sourcing agent to save costs and minimize duplicate sales and purchasing personnel
  - May establish a finance company to provide funding and currency swap services to all lower-tier entities
  - May employ local Chinese w/o using authorized employment agencies

Source: Ernst & Young, *Doing Business in China* (2003)

Investing in China

Foreign Investment Company Limited By Shares (FICLS)

- Chinese & foreign investors may establish a company limited by shares, or FIEs may be transformed into companies limited by shares
- Shares may be listed in China and abroad
- Transformation into an FICLS must meet specified requirements
- FICLS have been difficult to organize because of demanding regulatory preconditions and requirements for MOC approval
- FICLSs should become more popular as more Chinese companies organized as share companies establish market presence, thereby reducing the benefit of forming joint ventures

Source: Ernst & Young, *Doing Business in China* (2003); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions.*

Investing in China

Representative Office

- Often the fastest & cheapest method of establishing a presence in China
- Permits companies to learn Chinese market, develop relationships with government officials and potential future customers or partners
- To establish, must have local Chinese sponsor
- Licensed for only 3 years at a time
- Permitted activities:
  - Indirect operating activities, including liaison work, consulting, market research, general information gathering, and sourcing and procurement of products and materials
- Prohibited activities
  - May not conclude or direct product sales
  - May not directly employ local Chinese; must use employment agencies
  - Profit-making activities
    - legal services exception: foreign law firms allowed to operate only through one representative office and permitted to engage in profit-making activities

Sources: R. Mark Mechem, *Strategies for Investing in China*, The China Business Review (September–October 2004); PricewaterhouseCoopers, *Doing Business in China: A Survey of Issues Encountered by Foreign Companies Doing Business or Investing in China* (March 2004); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions*, Ernst & Young, *Doing Business in China* (2003).

Investing in China

Branch Offices

- China's Company Law theoretically permits foreign firms to open branches in China. In practice, however, only foreign banks, foreign insurance companies and foreign law firms are currently allowed to establish branches in China
- Foreign company must appoint a representative in charge of the branch and must allocate operational funds to the branch
- Do not have status of Chinese legal entities (i.e., the foreign company assumes civil liability for operational branch activities)

Sources: U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions;* Ernst & Young, *Doing Business in China* (2003).

Investing in China

Other Arrangements

- Other foreign enterprise arrangements in China include:
  - *Leasing and Licensing Arrangements*
  - *Compensation Trade Arrangements (also know as "buy-back")*
  - *Counter-Trade Arrangements (also referred to as "barter trade")*
  - *Processing and Assembly Agreements*
  - *Direct Sales*

Source: Ernst & Young, *Doing Business in China* (2003).

Investing in China

Regulatory Issues

- China's legal and regulatory system lacks transparency and consistent enforcement despite the promulgation of thousands of regulations, opinions, and notices affecting foreign investment.
- Although the Chinese government has simplified the legal and regulatory environment for foreign investors in recent years, China's laws and regulations are still often ambiguous.
- Foreign investors continue to rank the inconsistent and arbitrary enforcement of regulations and the lack of transparency as two major problems in China's investment climate.

Source: U.S. Commercial Service

Investing in China

Regulatory Issues: Taxation

- The State Administration of Taxation (SAT) administers China's tax system: drafts tax legislation; sets collection targets; collects taxes.
- Foreign companies are subject to various taxes in China, including income taxes, business taxes, and VAT.
- Penalties for late or non-payment range from monetary fines (as high as 5 times the amount due) to license withdrawal and seizure of assets.
- Selected taxes of interest to foreign investors include:
  - *Foreign Enterprise Income Tax (FEIT)*
  - *VAT*
  - *Business Taxes*
  - *Consumption Tax*
  - *Withholding Taxes*
  - *Individual Income Tax (IIT)*

Investing in China

Regulatory Issues: Accounting

- Annual financial statements for annual audit must filed at end of April.
- Accounting statement must conform to regulations issued by the MOF.
- Registered Certified Public Accountants must prepare the annual audit.
- Specific audit requirements depend on company's business scope & size.
- Representative offices also subject to annual audit, even if tax exempt.
- Non-compliance with audit requirements subject to heavy penalties.

Source: U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions.*

Investing in China

Regulatory Issues: Foreign Exchange

- Regulated by State Administration of Foreign Exchange (SAFE).
- Control based on whether transaction is current or capital account item.
  - current account items -- ordinary transactions within context of international receipts and payments (including import/export of goods and services).
  - capital account items -- items of increase or decrease in debt and equity caused by inflow/outflow of capital in context of international receipts and payments (including direct investment, loans and investment in securities).
- For current account items, company can usually buy/sell foreign currency through designated forex banks without prior approval of SAFE.
- FIEs may keep foreign exchange in forex accounts at commercial banks.

Source: Enterprise Ireland, *Doing Business in China* (2003); U.S. Commercial Service, *China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions.*

Investing in China

Regulatory Issues: Capitalization/Financing

- Export Credits:
  - Available to U.S. investors through the U.S. Export-Import Bank.

Direct Grants:

  - For example, the U.S. Trade & Development Agency funds feasibility studies, orientation visits, specialized training grants, business workshops and technical assistance worldwide.

- Multilateral Agencies:
  - World Bank has large loan program in China & funds key infrastructure projects.
  - International Finance Corporation assists JV and share holding companies to raise capital in international markets.
  - Asian Development Bank provides loans/technical assistance to governments for specific projects/programs.

Source: U.S. Commercial Service,*China Country Commercial Guide FY 2004 (July update): A Guide to Doing Business in China & Information on Current Economic Conditions*.

Investing in China

Planning an Exit Strategy

- Investors always face possibility of failure and should anticipate steps if investment does not succeed.
- PricewaterhouseCoopers survey found that only 18% of respondents had prepared an exit strategy.
- The survey found that the 3 major concerns of foreign companies if they exited China were:
  - to mitigate loss
  - to maximize value
  - to maintain reputation
- There have been many examples of failed or disappointing investments in China, such as:

World's top brewers
PepsiCo
McDonnell Douglas
Asimco
Subway

Investing in China

Practical Considerations 1 of 6

- A company should review not only traditional business factors but also practical and realistic considerations about the Chinese market.
- Some practical considerations that might affect business operations include:
  - **Trading & Distribution Rights**
  - **Energy Issues**
  - **Water Shortages**
  - **Infrastructure Problems**
  - **Currency Issues**
  - **Availability of Land**

Investing in China

Practical Considerations 2 of 6

- **Trading & Distribution Rights**
  - Although China has extended trading rights in accord with WTO commitments, investors may still have problems acquiring or registering for trading rights.
  - U.S.-China Business Council recently noted: “Concern has increased given reports that majority foreign-invested joint ventures have encountered difficulty registering for trading rights at the local level.”
  - Although China issued legislation granting distribution rights as of December 11, 2004, the U.S.-China Business Council notes: “This issue will remain of primary importance to foreign enterprises in China” until China fully issues implementing regulations and clearly spells out the procedures for obtaining distribution rights.

Investing in China

Practical Considerations 3 of 6

- **Energy Issues**: A company should be aware of the energy risks that exist in China with respect to both reliable and consistent supply and the price of energy.
  - Energy shortages in China
    - Energy outages can be a severe impediment to a business that depends on a consistent, adequate, and uninterrupted supply of energy, e.g., steel mills or glass factories.
    - In recent months, China has experienced severe energy shortages and that situation is likely to take years to resolve.
  - Dependence on low-priced energy
    - If a company's business plan is based on availability of low-priced energy, it should be aware of that energy prices in China will likely rise in the future due to high demand and limited supply.

Investing in China

Practical Considerations 4 of 6

- **Water Shortages**
  - In addition to energy shortages, China is severely short of water. The lack of a reliable water supply could severely affect a company's business operations in China.

- **Infrastructure Problems**
  - A host of infrastructure factors in China may affect whether a business operates efficiently.
  - For example, logistics – transportation system, quality of roads, availability of rail or water transport – must be considered.
  - Logistical problems may make it difficult to get a product to market or to a place for export.

Investing in China

Practical Considerations 5 of 6

- **Currency Issues**
  - Since 1994, the yuan has been pegged at 8.24 per dollar. Many experts assert that China's currency is undervalued.
  - China has been under pressure from the U.S. and other countries to adjust its exchange rate.
  - A company should consider the following practical questions:
    - Will the value of the currency be maintained over time?
    - Will the value stay stable or will it float in the future?
    - To what extent is the exchange rate predictable?
    - What effect would a change have on business operations and future plans?

Investing in China

Practical Considerations 6 of 6

- **Availability of Land**
  - In China, the State owns urban land and peasant collectives own most rural and suburban land, although private entities may be granted or allocated land use rights.
  - China has been undergoing significant land requisitions due to rapid economic growth, skyrocketing land prices, and urban renewal.
  - A company should consider whether its land use needs can be maintained.
    - E.g., if a company leased a large tract of land with the intent of using a portion today and reserving a portion for future expansion, how secure would its land use rights be?

Investing in China

Investment in Hong Kong 1 of 2

- An alterative way to access China through investment is to set up business in Hong Kong that would be eligible for CEPA preferences.
- The Closer Economic Partnership Arrangement (CEPA), signed in 2003, is a free trade agreement between Hong Kong and Mainland China and offer greater access than that gained by WTO entry.
  - Goods: 374 products of HK origin (90% of HK exports to China) have zero-tariff treatment now; other products are eligible for similar treatment.
  - Services: CEPA liberalizes market access for 26 service sectors in the Mainland.

Investing in China

Investment in Hong Kong 2 of 2

- Zero-tariff access to China via HK CEPA offers U.S. companies an incentive to set up factories or assembly lines in Hong Kong.
- Although HK labor costs are high, CEPA can benefit production of high-tariff and high-value-added goods (e.g., jewelry, high-end garments, watches, and products with IP content (such as high-tech products and pharmaceuticals).
- U.S. services providers could qualify as HK providers by (1) setting up a subsidiary (need 3-5 years' substantive business operations to qualify), or (2) investing in HK company (shares up to 49%) already CEPA-qualified.
- HK products that have received CEPA preferences include textiles and clothing, pharmaceutical products, plastics and plastic articles, chemical products, and electric and electronic products.

Exporting to China

Exporting to China

- Expansion of exports to China is a priority of the U.S. Government.
- The Department of Commerce recently established the China Business Information Center (CBIC) to assist U.S. exporters:
  - Consists of an 800 number where the public can speak to a China specialist, as well as a website (www.export.gov/china) with China-focused information and export tools.
  - CBIC "offers clients access to counseling with trade specialists in the United States, referrals to USFCS officers in China, and helps channel trade leads to clients through U.S. Export Assistance Centers."

Exporting to China
Best Prospects for US Exporters

- Non-agricultural goods and services:
  - information technology
  - telecommunications equipment
  - software
  - medical equipment
  - pollution-control equipment
  - oil and gas equipment
  - airport and ground support equipment
  - building/decorations materials
  - auto parts
  - agricultural chemicals
  - plastic materials and resins
- Agricultural goods and services
  - grains
  - grass seeds
  - oilseeds
  - cotton
  - poultry meat
  - hides & skins
  - tree nuts and dried fruit
  - wine
  - fresh fruit
  - beef & pork
  - aquatic products
  - forest products

Exporting to China
Best Prospects for US Exporters

Annual 2003 estimates *in millions of US$s*	Total Market Size	Total Local Production	Total Exports	Total Imports	U.S. Imports	U.S Mkt Share
Information Technology Market:	258,055	258,596	9,414	8,873	706	0.3%
Telecommunications Equipment Market:	20,500	18,000	4,500	7,000	900	4.4%
Packaged Software Market:	16,635	15,903	222	954	198	1.2%
Medical Equipment Market:	3,213	2,755	1,006	1,464	730	22.7%
Pharmaceuticals Market:	16,170	15,503	835	1,502	137	0.8%
Pollution Control Equipment Market:	17,485	7,040	345	10,790	1,150	6.6%
Airport and Ground Support Equipment Market:	1,884	758	268	1,354	231	12.3%
Buildings / Decorative Materials Market:	18,591	19,800	2,057	848	60	0.3%
Automotive Parts Market:	22,364	20,167	3,220	5,940	95	0.4%
Agricultural Chemicals Market:	11,250	10,296	1,147	2,101	720	6.4%
Plastic Materials and Resins Market:	19,055	6,400	650	13,305	1,100	5.8%

Source: "China Country Commercial Guide FY 2004 - Leading Sectors for U.S. Exports and Investment," US & Foreign Commercial Service, US Department of State. (July 15, 2003) http://www.buyusainfo.net

U.S. Trade with China
Top 10 US Export Commodities
4-digit HS Level

Rank	HTS Sub.	In Thousands of Dollars	2001	2002	2003	January - July 2003	January - July 2004
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1	1201	Soybeans, Whether Or Not Broken	1,012,486	888,741	2,830,335	1,091,000	732,789
2	8802	Aircraft, Powered (For Example, Helicopters, Airplanes); Spacecraft (Including Satellites) And Spacecraft Launch Vehicles	2,177,130	3,095,675	2,168,856	1,115,954	1,080,113
3	8542	Electronic Integrated Circuits And Microassemblies; Parts Thereof	761,452	1,051,060	1,819,010	906,963	1,270,058
4	5201	Cotton, Not Carded Or Combed	42,863	137,986	733,080	320,291	1,268,713
5	7204	Ferrous Waste And Scrap; Remelting Scrap Ingots Of Iron Or Steel	419,439	447,401	681,796	362,690	519,097
6	8471	Automatic Data Processing Machines And Units Thereof; Magnetic Or Optical Readers, Machines For Transcribing And Processing Coded Data, Nesoi	780,925	573,560	578,825	323,327	320,080
7	3100	Fertilizers (Exports Only; Includes Crude Fertilizers From Other Areas)	415,480	656,767	457,034	206,652	209,077
8	8473	Parts And Accessories Nesoi For Typewriters And Other Office Machines Of Headings 8469 To 8472	417,336	328,245	444,451	236,862	266,737
9	4101	Raw Hides And Skins Of Bovine Or Equine Animals (Fresh Or Preserved, But Not Tanned Or Further Prepared), Whether Or Not Dehaired Or Split	395,623	383,312	437,291	237,728	289,689
10	4707	Waste And Scrap Of Paper Or Paperboard	169,151	211,372	410,506	211,546	264,327

China's Imports from the World and U.S. Share

Top 25 Import Commodities at 4-digit HS Level

Rank	HS	Commodity Description	World	U.S.	Japan	Taiwan	Korea	Germany	U.S. % of World
		All Products	**413,096**	**33,883**	**74,204**	**49,364**	**43,161**	**24,392**	8.2%
1	8542	Electronic Integrated Circuits & Microassembl, Pts	41,858	1,867	8,169	9,794	4,453	570	4.5%
2	2709	Crude Oil From Petroleum And Bituminous Minerals	19,824	0	13	0	-	-	0.0%
3	9013	Liquid Crystal Devices Nesoi; Lasers; Opt Appl; Pt	12,681	67	2,350	4,610	4,219	21	0.5%
4	8473	Parts Etc For Typewriters & Other Office Machines	12,082	470	2,090	1,668	860	55	3.9%
5	8471	Automatic Data Process Machines; Magn Reader Etc	11,418	1,390	859	754	709	158	12.2%
6	8541	Semiconductor Devices; Light-Emit Diodes Etc, Pts	7,532	389	2,429	1,251	477	127	5.2%
7	8529	Parts For Television, Radio And Radar Apparatus	7,215	328	1,983	464	1,534	202	4.5%
8	8479	Machines Etc Having Individual Functions Nesoi, Pt	6,342	659	2,407	576	485	1,021	10.4%
9	8708	Parts & Access For Motor Vehicles (Head 8701-8705	6,181	145	1,844	253	689	2,129	2.3%
10	2710	Oil (Not Crude) From Petrol & Bitum Mineral Etc.	5,876	100	322	143	1,548	25	1.7%
11	1201	Soybeans, Whether Or Not Broken	5,417	2,217	-	0	-	-	40.9%
12	8525	Trans Appar For Radiotele Etc; Tv Camera & Rec	5,051	99	1,416	542	2,094	24	2.0%
13	2601	Iron Ores & Concentrates, Including Roast Pyrites	4,858	0	4	0	-	-	0.0%
14	8703	Motor Cars & Vehicles For Transporting Persons	4,444	243	1,642	70	197	1,944	5.5%
15	7209	Fl-Rl Iron & Na Steel Nun600Mm Wd Cold-Rl, No Clad	4,198	119	560	775	526	27	2.8%
16	7210	Fl-Rl Iron & Na Steel Nun600Mm Wd, Clad Etc	3,954	30	1,145	875	675	68	0.8%
17	8534	Printed Circuits	3,638	53	627	1,149	500	12	1.4%
18	7208	Fl-Rl Iron & Na Steel Nun600Mm Wd Hot-Rl, Not Clad	3,584	148	555	252	461	41	4.1%
19	8802	Aircraft, Powered; Spacecraft & Launch Vehicles	3,501	1,876	-		-	348	53.6%
20	8504	Elec Trans, Static Conv & Induct, Adp Pwr Supp, Pt	3,459	222	583	364	281	305	6.4%
21	3903	Polymers Of Styrene, In Primary Forms	3,434	39	379	1,295	897	19	1.1%
22	3901	Polymers Of Ethylene, In Primary Forms	3,425	151	250	380	657	70	4.4%
23	7219	Fl-Rl Stainless Steel Products, Not Und 600Mm Wide	3,333	96	535	764	779	161	2.9%
24	2917	Polycarboxylic Acids & Anhyd Etc, Halog, Sulf Etc	3,290	35	439	842	1,093	35	1.1%
25	8536	Electrical Apparatus For Switching Etc, Nov 1000 V	3,234	238	899	326	184	214	7.4%

China's Imports from the World and U.S. Share

Top 25 Import Commodities from the U.S. at 4-digit HS Level

Rank	HS	Commodity Description	World	U.S.	Japan	Taiwan	Korea	Germany	U.S. % of World
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11	1201	Soybeans, Whether Or Not Broken	5,417	2,217	-	0	-	-	40.9%
19	8802	Aircraft, Powered; Spacecraft & Launch Vehicles	3,501	1,876	-		-	348	53.6%
1	8542	Electronic Integrated Circuits & Microassembl, Pts	41,858	1,867	8,169	9,794	4,453	570	4.5%
5	8471	Automatic Data Process Machines; Magn Reader Etc	11,418	1,390	859	754	709	158	12.2%
46	3818	Chem Elem Doped, Used In Electron, Discs Wafers E	1,617	860	88	161	27	24	53.2%
68	4707	Waste And Scrap Of Paper Or Paperboard	1,232	782	117	1	12	34	63.5%
77	5201	Cotton, Not Carded Or Combed	1,163	660	0	-	0	-	56.8%
8	8479	Machines Etc Having Individual Functions Nesoi, Pt	6,342	659	2,407	576	485	1,021	10.4%
28	8517	Electric Apparatus For Line Telephony Etc, Parts	3,088	638	220	152	176	132	20.6%
129	4101	Raw Hides & Skins Of Bovine Or Equine Animals	712	488	0	0	0	12	68.6%
4	8473	Parts Etc For Typewriters & Other Office Machines	12,082	470	2,090	1,668	860	55	3.9%
96	3105	M Or Ch Fertiliz, Nun2Of3El; Fert Nesoi; Fert Pack	924	463	0	0	0	0	50.2%
75	9027	Inst Etc For Physical Etc Anal Etc; Microtome; Pts	1,186	460	219	13	7	158	38.8%
56	7204	Ferrous Waste & Scrap; Remelt Scr Iron/Steel Ingot	1,405	456	223	29	21	43	32.4%
168	0207	Meat & Ed Offal Of Poultry, Fresh, Chill Or Frozen	462	446	-	-	-	-	96.6%
94	8803	Parts Of Balloons Etc, Aircraft, Spacecraft Etc	934	433	8	0	1	17	46.3%
70	9030	Oscilloscopes, Spectrum Analyzers Etc, Parts Etc	1,221	420	278	97	49	128	34.4%
6	8541	Semiconductor Devices; Light-Emit Diodes Etc, Pts	7,532	389	2,429	1,251	477	127	5.2%
89	9018	Medical, Surgical, Dental Or Vet Inst, No Elec, Pt	1,059	388	220	7	29	185	36.6%
36	8414	Air Or Vac Pumps, Compr & Fans; Hoods & Fans; Pts	2,306	374	428	209	243	239	16.2%
43	9031	Machines, Nesoi In Chapter 90; Profile Project, Pt	1,728	374	460	125	115	225	21.6%
32	3907	Polyethers, Expoxides & Polyesters, Primary Forms	2,837	345	543	677	319	77	12.2%
7	8529	Parts For Television, Radio And Radar Apparatus	7,215	328	1,983	464	1,534	202	4.5%
59	7404	Copper Waste And Scrap	1,328	293	381	30	53	54	22.0%
103	8418	Refrigerators, Freezers Etc; Heat Pumps Nesoi, Pts	861	273	200	14	34	19	31.7%

Exporting to China

Practical Considerations (1 of 4)

- **China imposes import barriers in sectors where the U.S. should have a competitive advantage.**
  - For example, the information technology, telecom, automotive, semiconductor, and pharmaceutical sectors.
  - Congressional-Executive Commission on China observed that in accordance with its “long tradition of economic planning,” China has intervened in certain industries to “generate global competitiveness, often targeting Chinese producers lagging significantly behind global competitors.”
  - According to the CECC, China’s “efforts to use industry policies to protect or develop Chinese industries at the expense of foreign firms may grow more acute as obvious barriers to trade are eliminated and more subtle barriers succeed.”

Exporting to China

Practical Considerations (2 of 4)

- **Import barriers in sectors where the U.S. *should* have a competitive advantage but do not due to China's Import Substitution Policies**
  - *Automobile Investment Guidelines* – China targets 50% of the market by 2010 for domestically-produced autos.
  - *Telecommunications Equipment* – China has continued policies to discourage the use of imported components or equipment.
  - *Fertilizer* – China has given VAT exemptions and rebates for types of fertilizers that are primarily produced domestically, but not for imported fertilizers.
  - *Semiconductors* -- China's 10th 5-Year Plan called for an increase in Chinese semiconductor output from $2 Billion in 2000 to $24 billion in 2010 and encouraged domestic integrated circuit industry by discriminatory VAT policies.

Exporting to China

Practical Considerations (3 of 4)

- **Inconsistencies in tariff classification**
  - Because "Customs officers have wide discretion in classifying a particular import," exporters face inconsistency in classification and "lack of uniformity makes it difficult to anticipate border charges" (e.g., chemical importers report that they have had to "negotiate" tariff classification with customs officers at each port).
- **Continued regulation of certain products**
  - Certain imported products remain subject to state trading in China, including grain, vegetable oil, sugar, crude oil, processed oil, chemical fertilizer, and cotton.
- **Standards**
  - Many U.S. industries have complained about China's manipulation of technical standards that restrict imports.

Exporting to China

Practical Considerations (4 of 4)

- **Specific examples of non-tariff barriers to trade cited by U.S. industries in comments to USTR:**
  - *Motorcycles* –internal polices that restrict motorcycle usage and motor cycle registration in major urban areas effectively close China's market to U.S. producers.
  - *Soda ash* -- China fosters development of domestic soda ash industry through government support of Chinese producers (95% SOEs).
  - *Dairy ingredients* -- failure to incorporate science-based comments into standards and technical regulations on certain dairy ingredients; delays in processing import permits and improper classification of imported whey products; inadequacies in testing methodology has led to extensive Customs delays.

Sourcing from China

Sourcing from China

- Many U.S. companies have considered, or are considering, whether to source raw materials, parts, or finished products, from China.
- Even for companies that do not source from China, competition with companies that do source from China can affect their operation.
- Merits of sourcing from China include:
  - lower labor costs
  - flexibility in production
  - geographically close to downstream manufacturers
  - greater familiarity with the Chinese market
  - lower capital costs
  - favorable tax structures

Sourcing from China

Practical Considerations (1 of 2)

- **Initial start-up time**
  - The time necessary to start up a sourcing operation may be longer than anticipated due to both foreseen or unforeseen factors
- **Poor protection of intellectual property rights**
  - China's record on protecting IPR has been dismal; piracy and counterfeiting are likely to remain severe in the near future
- **Management complexity**
  - Time differences and geographic distances complicate such matters as communication and quality control
- **Additional supply chain and logistical complexity**
  - Greater complexity in finding, negotiating with, and managing suppliers in China
  - Possible logistical problems transporting the product
  - The longer the supply chain, the more likely delays in delivery

Sourcing from China

Practical Considerations (2 of 2)

- **Energy shortages and other operational interruptions**
  - Recent significant energy and water shortages are a substantial business risk to companies whose sourcing operations depend on a reliable and consistent supply of both .
- **Enforcement of contracts**
  - Make certain the Chinese partner is able and willing to do all required in the contract; if the project is not “win-win,” enforcement of the contract could be difficult.
- **Corruption**
  - Be aware of the requirements of the U.S. Foreign Corrupt Practices Act (FCPA) and avoid association with corrupt officials or illegal practices .

U.S. Trade with China

Top 10 US Imports at 4-digit HS Level

Rank	HTS Sub.	In Thousands of Dollars	2001	2002	2003	January - July 2003	January - July 2004
1	8471	Automatic Data Processing Machines And Units Thereof; Magnetic Or Optical Readers, Machines For Transcribing And Processing Coded Data, Nesoi	5,954,769	9,120,174	15,263,396	7,478,337	12,707,644
2	9503	Toys Nesoi; Scale Models Etc.; Puzzles; Parts And Accessories Thereof	5,946,518	6,418,282	6,617,510	2,943,876	3,177,134
3	6403	Footwear, With Outer Soles Of Rubber, Plastics, Leather Or Composition Leather And Uppers Of Leather	5,524,808	6,118,092	6,508,579	3,928,836	4,018,352
4	8473	Parts And Accessories Nesoi For Typewriters And Other Office Machines Of Headings 8469 To 8472	3,977,842	5,149,639	6,424,438	3,392,752	4,802,038
5	9403	Furniture, Nesoi (Other Than Seats, Medical, Surgical, Dental Or Veterinary Furniture) And Parts Thereof	2,931,427	4,280,916	5,281,311	3,019,533	3,615,569
6	8525	Transmission Apparatus For Radiotelephony, Radiotelegraphy, Radiobroadcasting Or Tv; Tv Cameras; Still Image Video Cameras And Recorders	1,374,149	2,845,397	4,517,212	1,971,067	3,887,997
7	9504	Articles For Arcade, Table Or Parlor Games, Including Pinball Machines, Billiards Etc.; Automatic Bowling Alley Equipment; Parts And Accessories	1,518,046	2,650,187	3,738,869	1,456,965	1,303,413
8	4202	Travel Goods, Vanity Cases, Binocular And Camera Cases, Handbags, Wallets, Cutlery Cases And Similar Containers, Of Various Specified Materials	2,191,016	2,799,488	3,192,361	1,811,998	2,214,448
9	9405	Lamps And Lighting Fittings And Parts Thereof Nesoi; Illuminated Signs Etc. With A Fixed Light Source And Parts Thereof Nesoi	2,458,887	2,939,528	3,024,560	1,633,454	1,826,547
10	9401	Seats (Other Than Barber, Dental And Similar Chairs), Whether Or Not Convertible Into Beds, And Parts Thereof	1,732,899	2,188,903	2,810,120	1,671,107	2,233,636

Dispute Resolution in China

Dispute Resolution in China

Use of Chinese Court System

- In China, the local people's courts handle civil and criminal cases and are divided into three levels:
  - "higher" courts for the provinces, autonomous regions, and special municipalities;
  - "intermediate" courts for the prefectures, autonomous prefectures, and municipalities; and
  - "basic" courts at the level of autonomous counties, towns, and municipal districts. Cases involving commercial disputes may be brought in either the basic-level courts or intermediate courts, depending on their nature.

Dispute Resolution in China

Use of Chinese Court System

- General consensus of experienced observers is that foreign companies should not turn to the Chinese courts as a first choice to resolve commercial business disputes (e.g., contract disputes).

- Chinese courts are not up to international standards and most judges have minimal or no legal training.

- Chinese courts are important for other areas, however, such as IPR disputes.

Dispute Resolution in China
Arbitration

- Arbitration is a method available to foreign companies to resolve business disputes in China.
- Generally, the underlying contract or agreement in dispute must contain an arbitration clause.
- Arbitration offers many advantages over litigation, among which are finality and greater transparency.
- Most commentators observe that foreign companies should choose arbitration to resolve commercial disputes rather than court litigation.
- U.S. Commercial Service: "Arbitration is the *preferred method* of dispute resolution in China, and approximately 90% of China-related disputes are resolved inside China."

Dispute Resolution in China

Arbitration

- In China, there are two Chinese arbitration bodies :
  - China International Economic and Trade Arbitration Commission (CIETAC)
  - China Maritime Arbitration Commission (CMAC) (for maritime disputes)
- CIETAC has been in operation for nearly 50 years.
- Most Chinese parties and form contracts propose arbitration by CIETAC.
- CIETAC maintains a list of arbitrators from whom the parties may choose, many of whom are foreigners.

Dispute Resolution in China

Arbitration

- China also has over 140 local arbitration commissions located in most major cities, the most active of which is the Beijing Arbitration Commission (BAC).
- International arbitration is an alternative to Chinese arbitration. However, it is often difficult to persuade a Chinese business partner to agree to arbitration outside China.
- Alternative international arbitral bodies include:
  - ICC (International Chamber of Commerce)
  - SCC (Stockholm Chamber of Commerce)
  - Hong Kong International Arbitration Center (HKIAC)
  - Singapore International Arbitration Centre
  - American Arbitration Association (AAA)

Dispute Resolution in China

Arbitration

- An important consideration to choosing arbitration proceedings in China is whether an award can be enforced.
- The enforcement of arbitral awards is "one of the most frequently cited difficulties of arbitration in China."
- Enforcement of arbitral awards can be sporadic because awards must be enforced through the Chinese courts.
- The problems of the Chinese courts that complicate enforcement of arbitration awards include:
  - insufficient legal training of court personnel
  - local protectionism, the influence of party officials
  - lack of professional ethics
  - inadequate authority

Dispute Resolution in China

China-U.S. Business Mediation Center

- Mediation is another way to resolve business disputes.
- The principle is that the parties can present their positions, arguments and proposals to an independent referee to work out a mutually-agreed solution.
- The Chinese courts and arbitral boards often encourage mediation as an initial step to resolve disputes.
- In January 2004, the China-U.S. Business Mediation Center opened.
- The new center will allow Chinese and U.S. companies a "relatively speedier and more inexpensive alternative to both the domestic court system and binding arbitration to resolve business disputes."

Trade Remedy Laws Available to Chinese and U.S. Industries

Trade Remedy Laws Available to Chinese and U.S. Industries

- When domestic industries in either China or the U.S. are injured by competition from imported products, they may turn to various trade remedy measures to seek relief.

China

- Antidumping
- Antisubsidy
- Safeguard

U.S.

- Antidumping duty law
- Countervailing duty law
- Global Safeguard
- China Product-Specific Safeguard
- China Textile Safeguard
- Section 301
- Section 337
- Section 232

Trade Remedy Laws

Chinese Trade Remedies

- With the reduction of trade barriers (both tariffs and quotas), and as China faces greater competition from foreign imported products, it is anticipated that China may resort more frequently to the use of trade remedy measures.
- U.S. companies that invest in or trade with China should be aware that trade remedies imposed by the Chinese government can sometimes cause significant disruption.
- In 1997, China issued the *Regulations on Antidumping and Antisubsidy* and initiated its first antidumping investigation on Newsprint from the U.S., Canada and Korea

Trade Remedy Laws

Chinese Trade Remedies

- After accession to the WTO, China promulgated new regulations covering antidumping, countervailing, and safeguard measures as well as implementation rules to bring its trade remedy regime into conformity with the WTO rules.

- Compared to China's pre-accession regulations, the new regulations appear generally to follow the language in the relevant WTO agreements, are more detailed, and provide more predictability to the parties concerned. However, as noted by WTO members in the context of China's Transitional Review Mechanism, some key provisions in the regulations are omitted or are worded in an ambiguous manner.

Trade Remedy Laws

Chinese Trade Remedies

- One positive aspect of the Chinese trade remedy regime is that it prescribes the mechanism of judicial review.
- According to the new trade laws, beginning on January 1, 2003, individuals or enterprises doing business with China can appeal to the country's courts if they disagree with the final determinations in anti-dumping and countervailing duty cases made by the relevant organs of the state Council, and the courts must accept and investigate any such appeals.

Trade Remedy Laws

Chinese Trade Remedies

- Antidumping measures
  - address imports of foreign products into China at prices less than its normal value which caused or threaten to cause material injury to an established Chinese industry or is materially retarding the establishment of such an industry.
  - to date, there have been a total of 33 petitions for antidumping investigations filed in China, 9 of which were filed prior to China's accession to the WTO.
  - affirmative final determinations were made in 18 cases and no-damage determinations in 2 cases.
  - China's Commerce Ministry is the sole investigative authority
    - The Bureau of Fair Trade for Imports and Exports, is responsible for determining whether imported merchandise is being, or is likely to be dumped.
    - The Bureau of Industrial Injury Investigation, is responsible for determining whether the dumped imports are causing or threatening to cause material injury

Trade Remedy Laws

Chinese Trade Remedies

- Antidumping measures
  - A common complaint about Chinese antidumping proceedings has been that they lack adequate transparency and do not effectively protect the interests and rights of the interested parties.
  - During the WTO's transitional review mechanism, China's trading partners also noted that Chinese antidumping proceedings failed to provide adequate disclosure of the analysis and rationale for the decisions by the investigating authorities, such as the information used to calculate dumping margins.
  - In addition, WTO Members voiced concerns of the treatment of confidential information in antidumping proceedings.

Trade Remedy Laws

Chinese Trade Remedies

- Countervailing Duty measures
  - deal with the unfair subsidization of an imported product by a foreign government which has caused material injury or threatens to cause material injury to an established Chinese industry, or has caused material retardation of the establishment of such an industry.
- Safeguard measures
  - Safeguard measures address situations where the import surge of a product has caused or threatens to cause serious injury to a domestic industry. If the safeguard investigation finds evidence of both the import surge and the consequent injury, safeguard measures will be applied in the form of a tariff increase or quantitative restrictions.

Trade Remedy Laws

Chinese Trade Remedies

- Safeguard measures
  - China first enacted *Regulations on Safeguard Measures* on January 1, 2002, following its accession to the WTO.
  - Since then, China has initiated only one safeguard investigation and applied only one safeguard measure – on certain steel products – which was subsequently terminated.
    - In that case, China initiated a safeguard investigation on certain steel products and imposed provisional safeguard measures on nine categories and seventeen sub-categories of steel products in May 2002. Notification under article 12.1(a) of the agreement on safeguards notification under article 12.4 of the agreement on safeguards, G/SG/N/6/CHN/1 & G/SG/N/7/CHN/1 (23 May 2002).

Trade Remedy Laws

Chinese Trade Remedies

- Safeguard measures
  - In November 2002, China announced definitive safeguard measures on five sub-categories of steel products.
    - Notification pursuant to Article 12.1(C) of the Agreement on Safeguards, G/SG/N/8/CHN/1 & G/SG/N/10/CHN/1 (5 November 2002).
  - Subsequently, on December 26, 2003, based on developments in the steel trade, China decided to terminate the definitive safeguard measures and stop levying safeguard duties on the five sub-categories of steel products.
    - Notification pursuant to Article 12.1(c) of the Agreement on Safeguards, G/SG/N/10/CHN/1/Suppl.1 (4 February 2004).

Trade Remedy Options

for US Domestic Industries to Address Trade Problems

- U.S. businesses faced with international trade problems, whether caused by import competition, export restrictions or other causes, have an array of trade remedy options available.

- Some of the available remedies focus on problems caused by unfairly or fairly traded imports, while other remedies focus on export restrictions, infringement of intellectual property rights, national security interests, or imports from a particular country.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems

- The remedy options available to domestic industries include:
  - Antidumping duty law
  - Countervailing duty law
  - Global Safeguard
  - China Product-Specific Safeguard
  - China Textile Safeguard
  - Section 301
  - Section 337
  - Section 232

Trade Remedy Options
for US Domestic Industries to Address Trade Problems
Antidumping Law

- **Antidumping law** addresses problems caused by price discrimination where goods are sold in the U.S. (export price) at prices lower than the prices at which comparable goods are sold in the home market of the exporter (normal value). Such imports are considered to be "dumped."

- Antidumping law seeks to offset, through the imposition of a special duty equal to the difference between the export price and normal value, the price discrimination that is injurious to a domestic industry.

Trade Remedy Options
for US Domestic Industries
to Address Trade Problems
Antidumping Law

- For example, if a Chinese producer of metal bookcases exported this product to the U.S. and it was sold in the U.S. at what is determined to be a "dumped" price and the domestic industry producing "like" metal bookcases is injured thereby, a remedy, in the form of an antidumping duty, is imposed to address the price discrimination found.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems
Antidumping Law

- An antidumping investigation is simultaneously conducted by both the Department of Commerce and the International Trade Commission.
- An antidumping investigation can take between 13-14 months to complete and is broken out into 5 stages.
- The remedy (antidumping duty) is prospective. That is, the duty is applied to imports going forward, not to past imports.

Trade Remedy Options

for US Domestic Industries to Address Trade Problems

Countervailing Duty Law

- Countervailing duty law is similar to antidumping law in that it addresses unfairly traded imports, but its focus is upon unfair subsidies that benefit the imports.
  - The remedy applied (countervailing duty) equals the amount of the unfair subsidy.
  - Countervailing duty investigations follow the same procedural scheme as antidumping investigations, but the time period for completion is shorter.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems
Section 337

- Another remedy that addresses unfair trade practices with respect to imports is a Section 337 action.
- Section 337 is concerned with unfair methods of competition and unfair acts in the importation of products that substantially injure a domestic industry producing those products.
- Section 337 also addresses imports that infringe a U.S. patent, copyright, registered trademark, or mask work.
- The ITC conducts Section 337 investigations and if a violation is found, it may issue exclusion orders and/or cease and desist orders with respect to the imports at issue.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems

Global Safeguard (Section 201)

- The global safeguard (Section 201) is a remedy that addresses fairly traded injurious imports.
- If a domestic industry is seriously injured by increased imports, a remedy in the form of tariffs, quotas, tariff-rate quotas, or other quantitative restrictions may be imposed, applicable to all countries (with the exception of certain designated developing countries).
- Safeguard investigations are conducted by the ITC but the President determines whether to impose a safeguard remedy as well as the form and duration of the safeguard.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems

Section 232 (National Security)

- Another remedy that addresses imports is a Section 232 action.
- This remedy however is not concerned with whether imports are fair or unfair but with whether imports threaten to impair national security.
- The Department of Commerce conducts Section 232 investigations.
- If DOC makes a determination that imports threaten to impair national security, the President determines whether, and in what form, to take action to "adjust" imports.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems
Section 301

- Section 301 focuses on the enforcement U.S. rights under trade agreements and on foreign government trade polices or practices that are unjustifiable, unreasonable, or discriminatory and which burden or restrict U.S. commerce.
- Thus, Section 301 does not focus on imports or exports per se but on trade agreement violations or unreasonable and discriminatory trade practices that can affect both imports and exports.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems
Section 301

- Section 301 investigations are conducted by the U.S. Trade Representative.

- The remedies that USTR may impose include suspension/withdrawal of trade concessions or preferential duty treatment, duties or other import restrictions, or the negotiation of binding agreements with the foreign country that eliminates the trade policy or practice at issue.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems

China Product-Specific Safeguard (Section 421)

- Section 421 is a product-specific safeguard that addresses product-specific import surges from China that occur for any reason.
- The injury standard applicable to Section 421 investigations is "market disruption," which exists when imports are increasing rapidly so as to be a significant cause of material injury to the domestic industry.

Trade Remedy Options
for US Domestic Industries to Address Trade Problems

China Product-Specific Safeguard (Section 421)

- The timeline for a Section 421 action is short -- 150 days from commencement to proclamation of relief (if any). The ITC conducts the Section 421 investigation.
- If the ITC makes an affirmative determination, it recommends a remedy to the President, who then determines whether to provide relief to the domestic industry.
- The President may provide relief in the form of increased tariffs or other import restrictions.
- The Section 421 remedy is available for 12 years from the date of China's WTO accession (until December 11, 2013).

Trade Remedy Options

for US Domestic Industries to Address Trade Problems

China Textile Safeguard

- Pursuant to China's WTO accession agreement, a special China safeguard for textiles is available to WTO members through the end of 2008.
- The U.S. the Committee to Implement Textile Agreements ("CITA") administers the special textile safeguard procedures.
- Domestic parties may petition for relief if Chinese textile imports cause market disruption.
- If CITA makes an affirmative determination, it may impose a remedy in the form of quantitative limits on textile imports.

Trade Remedies Summary

Remedy	Trade Problem Addressed	Criteria for Remedy	Form of Remedy	Agency
Antidumping law (Section 731)	Price Discrimination (unfair trade)	Material injury or threat thereof to domestic industry	Antidumping duty order	ITA – dumping ITC – injury
Countervailing Duty law (Section 701)	Subsidized Imports (unfair trade)	Material injury or threat thereof to domestic industry	Countervailing duty order	ITA – subsidies ITC – injury
Global Safeguard (Section 201)	Increased Imports (fair trade)	Serious injury to domestic industry	❖ Tariff ❖ Quota ❖ TRQ ❖ Orderly marketing arrangements ❖ Trade adjustment assistance, or combination	ITC - investigates and recommends remedy President – determines form and duration of remedy

Trade Remedies Summary *(cont'd)*

Remedy	Trade Problem Addressed	Criteria for Remedy	Form of Remedy	Agency
Section 301	Foreign government policy/practice	Violates trade agreements	Suspension / withdrawal of trade concessions or preferential duty treatment, duties, other import restrictions, or negotiation of binding agreement that eliminates the trade policy or practice at issue	USTR (subject to President's direction)
	Unjustifiable, unreasonable, or discriminatory trade practices	Burdens or restricts U.S. commerce		
Section 337	Unfair methods of competition and unfair acts affecting imports	Destroys or substantially injures domestic industry	Exclusion orders and/or cease and desist orders	ITC
	Imports	Infringe patents, trademarks, copyright or mask work		

Trade Remedies Summary *(cont'd)*

Remedy	Trade Problem Addressed	Criteria for Remedy	Form of Remedy	Agency
Section 232	Imports	Threatens to impair national security	Action to "adjust" imports so as not to threaten to impair national security	DOC - whether imports threaten to impair national security President - determines nature and duration of remedy
China Product-Specific Safeguard (Section 421)	Import surge from China	Market disruption	Increased duties or other import restrictions	ITC - investigates and recommends remedy President - determines form and duration of remedy
China Textile Safeguard	Imports from China	Market disruption	Quantitative restrictions	CITA

Outstanding U.S. Antidumping Orders on Chinese Imports

There are at present 58 outstanding dumping orders that apply to the following products imported from China:

Greige polyester cotton printcloth
Cotton shop towels
Potassium permanganate
Chloropicrin
Barium chloride
Natural bristle paint brushes
Iron construction castings
Petroleum wax candles
Porcelain-on-steel cooking ware
Tapered roller bearings
Industrial nitrocellulose
Axes & adzes
Bars & wedges
Hammers & sledges
Picks & mattocks
Sodium thiosulfate
Silicon metal
Sparklers
Carbon steel butt-weld pipe fittings

Sulfanilic acid
Helical spring lock washers
Sebacic acid
Fresh garlic
Paper clips
Silicomanganese
Cased pencils
Glycine
Pure magnesium (ingot)
Furfuryl alcohol
Brake rotors
Persulfates
Crawfish tail meat
Carbon steel plate
Preserved mushrooms
Creatine monohydrate
Non-frozen apple juice concentrate
Synthetic indigo
Aspirin

Steel concrete reinforcing bar
Foundry coke
Pure magnesium (granular)
Hot-rolled carbon steel flat products
Honey
Folding gift boxes
Automotive replacement glass windshields
Folding metal tables and chairs
Ferrovanadium
Non-malleable cast iron pipe fittings
Lawn & garden fence posts
Saccharin
Polyvinyl alcohol
Barium Carbonate
Refined brown aluminum oxide
Malleable iron pipe fittings
Color television receivers
Tetrahydrofurfuryl alcohol
Ironing tables
Polyethylene retail carrier bags

Trade Remedy Laws
U.S. Trade Remedies

- U.S. Countervailing Duty law
  - Under current U.S. policy, the Department of Commerce does not apply CVD law to imports from China and other NME countries.
  - Because this policy is not based on statute, the Department has the authority to change it as long as it provides a reasoned basis for the change.

Trade Remedy Laws
U.S. Trade Remedies

- Of the U.S. trade remedies identified above, note that two are expressly directed to imports from China –
  - the product specific safeguard and
  - the special textile safeguard.
- Both of these remedies stem from commitments made by China as part of its accession to the WTO.

Trade Remedy Laws

U.S. Trade Remedies

Product-Specific Safeguard (Section 421)

- To date, the ITC has conducted five Section 421 investigations.
- Although the ITC voted affirmatively in 3 of the 5 and recommended relief, to date the President has not granted relief to any industry.

Trade Remedy Laws
U.S. Trade Remedies

Special Textile Safeguard

- To date, CITA has accepted 3 textile safeguard petitions.
- In August 2003, CITA accepted petitions concerning knit fabric, dressing gowns, and brassieres.
- CITA reached affirmative determinations of market disruption in November 2003 and the 90-day consultation period did not produce a satisfactory solution.
- Thus, the textile quota issued by CITA on these 3 products will stay in place until December 23, 2004.

Trade Remedy Laws

U.S. Trade Remedies

Special Textile Safeguard

- On October 8, 2004, a U.S. textile industry coalition filed a new special textile safeguard petition covering cotton trousers
- They also announced that 9 additional petitions covering 13 more categories were expected to be filed in the coming days.
- The 10 threat-based safeguard petitions cover 15 of the 91 product categories on which U.S. quotas will expire on January 1, 2005, and cover roughly $1.96 billion in U.S. textile and clothing imports.
- The product covered by the 10 petitions are the following:
  - Trousers -- Cotton, Man-made, and Wool
  - Non-Knit and Knit Shirts -- Cotton, Man-made fiber
  - Underwear -- Cotton and Man-made fiber
  - Sheets -- Cotton
  - Synthetic filament fabric
  - Cotton Yarn
- The US industry also intends to request an extension of the current safeguards.

END