Doing Business With China

What Your Clients Need to Know

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Terence P. Stewart, Esq., Managing Partner
Alan M. Dunn, Esq., Partner
Eugene H. Moore, Esq., Of-Counsel
Stewart and Stewart, 2100 M Street, NW
Washington, DC 20037
(202) 785-4185
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

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
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

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 Guanzhong
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 Xiujuan
Han Qile
Hu Luli
Ismael Amat
Jiang Zhonghua

Secretary General
Sheng Huaren

NPC Committees

Directors
Agriculture and Rural Liu Mingzu
Education, Science, Culture, and Health Zhu Lilian
Environment and Resource Conservation Mao Ruibai
Finance and Economics Fu Zhihuan
Foreign Affairs Jiang Enzu
Internal Affairs Administration He Chundin
Legal Affairs Yang Jingyu
Nationalities Doje Coring
Overseas Chinese Affairs Chen Guangyi

STATE COUNCIL

Premier
Wen Jiabao
Vice Premiers
Huang Ju, Hui Liangyu, Wu Yi, Zang Peiyian
State Councilors
Cao Gangchuan, Chen Zhili, Hua Jianmin,
Tang Jiaxuan, Zhou Yongtang

Secretary General
Hu Jiaxin

OFFICES OF THE STATE COUNCIL

Foreign Affairs Office Liu Huajiu
Legislative Affairs Office Cao Kangtai

CHINESE PEOPLE’S POLITICAL CONSULTATIVE CONFERENCE

Chair Jia Qinglin

Supreme People’s Court
President Xiao Yang

Supreme People’s Procuratorate
President Ja Chunwang
**MINISTRIES AND MINISTRY-LEVEL ORGANIZATIONS**

<table>
<thead>
<tr>
<th>Ministry/Agency</th>
<th>Name</th>
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<tbody>
<tr>
<td>Ministry of Civil Affairs</td>
<td>Li Xieju</td>
<td>Ministry of Finance</td>
<td>Jin Renqing</td>
<td>Ministry of Land and Natural Resources</td>
<td>Sun Wonshong</td>
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<tr>
<td>Ministry of Communications</td>
<td>Zhang Chunjian</td>
<td>Ministry of Health</td>
<td>Wu Yi</td>
<td>Ministry of Personnel</td>
<td>Zhang Bailin</td>
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**OTHER KEY GOVERNMENT AGENCIES**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Name</th>
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<tr>
<td>China Post**</td>
<td>Liu Andong</td>
<td>National Tourism Administration</td>
<td>He Guangwen</td>
<td>State Electricity Regulatory Commission</td>
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<td>Development Research Center of the State Council</td>
<td>Wang Mingkui</td>
<td>State Administration of Foreign Exchange*</td>
<td>Gao Shuang</td>
<td>State Forestry Administration</td>
<td>Zhou Shuangxian</td>
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<td>General Administration of Civil Aviation of China (CAAC)</td>
<td>Yang Yuanyan</td>
<td>State Administration of Radio, Film, and Television</td>
<td>Xu Guangchun</td>
<td>State Intellectual Property Office</td>
<td>Wang Jingchuan</td>
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<tr>
<td>General Administration of Customs</td>
<td>Mou Xinsheng</td>
<td>State Administration of Taxation</td>
<td>Xu Xuren</td>
<td>State Sports General Administration</td>
<td>Yuan Weimin</td>
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Sources: US-China Business Council files, China Directory 2004
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*These listings are not meant to be comprehensive
**Under the authority of MII
Not included in the list of 38 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

- 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

- 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, maritime, 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)**

- **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
  - 70+% of Adults in Beijing, Shanghai & Guangzhou Plan to Buy Car During 2002-2007

- **Housing**
  - Sales in Beijing, Shanghai & Guangzhou Growing at 40+ % Per Yr
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

Four State-owned Commercial Banks
- China Construction Bank
- Bank of China
- Industrial and Commercial Bank of China
- Agricultural Bank of China

Commercial Banks
- 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

China Banking Regulatory Commission (CBRC)

US-China Trade Data

Chart 1:
Chinese Exports to the United States, as Reported by China and the United States

Value (US$, Bln)

Year


As Reported by US*
As Reported by China**

* - Source: US DOC; US Imports valued at C.V.
** - Source: China Customs; Exports to US valued at F.O.B.

Prepared by Georgetown Economic Services
US-China Trade Data

Chart 2:
Imports to China, as Reported by China and the United States

Value (US$, Bln)


- Source: US DOC; US exports valued at F.O.B.
- Source: China Customs; Imports from US valued at C.I.F. less 5%

Prepared by Georgetown Economic Services
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

Major Foreign Investors in China
China's Cumulative FDI by Top Source Economies for 2003

- Hong Kong: 45%
- United States: 9%
- Japan: 8%
- Taiwan: 7%
- Virgin Islands: 6%
- Singapore: 5%
- South Korea: 4%
- European Union: 7%
- All Other Sources: 9%
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

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

<table>
<thead>
<tr>
<th>Rank</th>
<th>Exporter</th>
<th>Billions US$s</th>
<th>Rank</th>
<th>Importer</th>
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<tr>
<td>1</td>
<td>United States</td>
<td>$693.9</td>
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<td>United States</td>
<td>$1,202.4</td>
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Excluding Intra-EU Trade

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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 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:
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.

- **Goods** - 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.

- **Services** - 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"
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 WTO Commitments

The GAO categorized China’s trade regime commitments into seven basic types:

- **Guidance** - implement certain commitments by means of a specific procedure or process
- **Adherence to WTO** - confirm or reiterate adherence to separate WTO obligations or agreements
- **Non-discrimination** - 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:
  - **Dual pricing** - 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.
  - **Price control** - will not be used for purposes of affording protection to domestic industries or services providers.
  - **Trading Rights** - 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.
  - **Subsidies** - 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 a 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

Textiles

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

- **Agriculture**
  - 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.

- **Intellectual property rights**
  - 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

- **Services – 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

- **Services - 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 10th 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 2\textsuperscript{nd} 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 1\textsuperscript{st} TRM effectively lowered expectations of WTO Members for the 2\textsuperscript{nd} 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.”
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
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.
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.
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

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

2003 7 mc 13,818.8 79,533.4 (65,714.6) 36.6% 29.5%
U.S. Trade with China
1985 - 2003
in millions of $US

Exports to China
Imports from China
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

<table>
<thead>
<tr>
<th>Rank</th>
<th>HS Chapter</th>
<th>U.S. Imports from China</th>
<th>U.S. Exports to China</th>
<th>Current U.S. China Trade Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>84 Nuclear Reactors, Boilers, Machinery And Mechanical Appliances; Parts Thereof</td>
<td>29,858,638</td>
<td>4,230,486</td>
<td>-25,628,153</td>
</tr>
<tr>
<td>2</td>
<td>85 Electrical Machinery And Equipment And Parts Thereof; Sound Recorders And Reproducers, Parts And Accessories</td>
<td>28,476,898</td>
<td>3,960,265</td>
<td>-24,516,633</td>
</tr>
<tr>
<td>3</td>
<td>95 Toys, Games And Sports Equipment; Parts And Accessories Thereof</td>
<td>16,100,790</td>
<td>26,081</td>
<td>-16,074,708</td>
</tr>
<tr>
<td>4</td>
<td>94 Furniture; Bedding, Cushions Etc.; Lamps And Lighting Fittings Nesoi; Illuminated Signs, Nameplates And The Like; Prefabricated Buildings</td>
<td>11,818,321</td>
<td>79,376</td>
<td>-11,738,945</td>
</tr>
<tr>
<td>5</td>
<td>64 Footwear, Gaiters And The Like; Parts Of Such Articles</td>
<td>10,546,440</td>
<td>36,433</td>
<td>-10,510,006</td>
</tr>
<tr>
<td>6</td>
<td>62 Articles Of Apparel And Clothing Accessories, Not Knitted Or Crocheted</td>
<td>5,478,132</td>
<td>3,769</td>
<td>-5,474,363</td>
</tr>
<tr>
<td>7</td>
<td>42 Articles Of Leather; Saddlery And Harness; Travel Goods, Handbags And Similar Containers; Articles Of Gut (Other Than Silkworm Gut)</td>
<td>4,848,697</td>
<td>4,350</td>
<td>-4,844,347</td>
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<tr>
<td>8</td>
<td>61 Articles Of Apparel And Clothing Accessories, Knitted Or Crocheted</td>
<td>3,188,629</td>
<td>3,993</td>
<td>-3,184,636</td>
</tr>
<tr>
<td>9</td>
<td>73 Articles Of Iron Or Steel</td>
<td>3,199,009</td>
<td>110,621</td>
<td>-3,088,388</td>
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<tr>
<td>10</td>
<td>39 Plastics And Articles Thereof</td>
<td>4,272,502</td>
<td>1,220,655</td>
<td>-3,051,847</td>
</tr>
</tbody>
</table>
## U.S. Trade with China - Annual 2003

### HS Chapters with Greatest Trade Surpluses

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

- **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.
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

<table>
<thead>
<tr>
<th>Year</th>
<th>Investment ($ millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>38</td>
</tr>
<tr>
<td>1990</td>
<td>138</td>
</tr>
<tr>
<td>1993</td>
<td>523</td>
</tr>
<tr>
<td>1995</td>
<td>1,263</td>
</tr>
<tr>
<td>2000</td>
<td>7,076</td>
</tr>
<tr>
<td>2001</td>
<td>7,727</td>
</tr>
<tr>
<td>2002</td>
<td>6,013</td>
</tr>
<tr>
<td>2003</td>
<td>6,791</td>
</tr>
</tbody>
</table>

Historical Cost - $ millions; Source: Bureau of Economic Analysis, USDOC
Golden Rules of Doing Business in China

1. Everything Is Possible.
3. Western Business Logic Does Not Apply.
4. It Is A Fun Project If There Is No Deadline.
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.
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.
“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.
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.”
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.
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.

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.
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.
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.
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.
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

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

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

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

Investing in China
Equity Joint Venture (EJV)

- 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

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

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

Investing in China

Chinese Holding Company (CHC) 1 of 3

- 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

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**

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

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

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

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).

Other foreign enterprise arrangements in China include:

- Leasing and Licensing Arrangements
- Compensation Trade Arrangements (also known as “buy-back”)
- Counter-Trade Arrangements (also referred to as “barter trade”)
- Processing and Assembly Agreements
- Direct Sales

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 be filed at the end of April.
- Accounting statements 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 and size.
- Representative offices are also subject to annual audit, even if tax-exempt.
- Non-compliance with audit requirements subject to heavy penalties.

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.

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.

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
  - Asimco
  - PepsiCo
  - Subway
  - McDonnell Douglas
Investing in China

Practical Considerations

- 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
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

- **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.
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

- **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?
An alternative 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.
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

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

http://www.buyusainfo.net
## U.S. Trade with China
### Top 10 US Export Commodities
#### 4-digit HS Level

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

Note: January - July
## China’s Imports from the World and U.S. Share

### Top 25 Import Commodities at 4-digit HS Level

<table>
<thead>
<tr>
<th>Rank</th>
<th>HS</th>
<th>Commodity Description</th>
<th>World</th>
<th>U.S.</th>
<th>Japan</th>
<th>Taiwan</th>
<th>Korea</th>
<th>Germany</th>
<th>U.S. %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8542</td>
<td>Electronic Integrated Circuits &amp; Microassembl, Pts</td>
<td>413,096</td>
<td>33,883</td>
<td>74,204</td>
<td>49,364</td>
<td>43,161</td>
<td>24,392</td>
<td>8.2%</td>
</tr>
<tr>
<td>2</td>
<td>2709</td>
<td>Crude Oil From Petroleum And Bituminous Minerals</td>
<td>19,824</td>
<td>0</td>
<td>13</td>
<td>0</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
</tr>
<tr>
<td>3</td>
<td>9013</td>
<td>Liquid Crystal Devices Nesoi; Lasers; Opt Appl; Pt</td>
<td>12,681</td>
<td>67</td>
<td>2,350</td>
<td>4,610</td>
<td>4,219</td>
<td>21</td>
<td>0.5%</td>
</tr>
<tr>
<td>4</td>
<td>8473</td>
<td>Parts Etc For Typewriters &amp; Other Office Machines</td>
<td>12,082</td>
<td>470</td>
<td>2,090</td>
<td>1,668</td>
<td>860</td>
<td>55</td>
<td>3.9%</td>
</tr>
<tr>
<td>5</td>
<td>8471</td>
<td>Automatic Data Process Machines; Magn Reader Etc</td>
<td>11,418</td>
<td>1,390</td>
<td>859</td>
<td>754</td>
<td>709</td>
<td>158</td>
<td>12.2%</td>
</tr>
<tr>
<td>6</td>
<td>8541</td>
<td>Semiconductor Devices; Light-Emit Diodes Etc, Pts</td>
<td>7,532</td>
<td>389</td>
<td>2,429</td>
<td>1,251</td>
<td>477</td>
<td>127</td>
<td>5.2%</td>
</tr>
<tr>
<td>7</td>
<td>8529</td>
<td>Parts For Television, Radio And Radar Apparatus</td>
<td>7,215</td>
<td>328</td>
<td>1,983</td>
<td>464</td>
<td>1,534</td>
<td>202</td>
<td>4.5%</td>
</tr>
<tr>
<td>8</td>
<td>8479</td>
<td>Machines Etc Having Individual Functions Nesoi, Pt</td>
<td>6,342</td>
<td>659</td>
<td>2,407</td>
<td>576</td>
<td>485</td>
<td>1,021</td>
<td>10.4%</td>
</tr>
<tr>
<td>9</td>
<td>8708</td>
<td>Parts &amp; Access For Motor Vehicles (Head 8701-8705)</td>
<td>6,181</td>
<td>145</td>
<td>1,844</td>
<td>253</td>
<td>689</td>
<td>2,129</td>
<td>2.3%</td>
</tr>
<tr>
<td>10</td>
<td>2710</td>
<td>Oil (Not Crude) From Petrol &amp; Bitum Mineral Etc.</td>
<td>5,876</td>
<td>100</td>
<td>322</td>
<td>143</td>
<td>1,548</td>
<td>25</td>
<td>1.7%</td>
</tr>
<tr>
<td>11</td>
<td>8525</td>
<td>Trans Appar For Radiotele Etc; Tv Camera &amp; Rec</td>
<td>5,051</td>
<td>99</td>
<td>1,416</td>
<td>542</td>
<td>2,094</td>
<td>24</td>
<td>2.0%</td>
</tr>
<tr>
<td>12</td>
<td>2601</td>
<td>Iron Ores &amp; Concentrates, Including Roast Pyrites</td>
<td>4,858</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
</tr>
<tr>
<td>13</td>
<td>8703</td>
<td>Motor Cars &amp; Vehicles For Transporting Persons</td>
<td>4,444</td>
<td>243</td>
<td>1,642</td>
<td>70</td>
<td>197</td>
<td>1,944</td>
<td>5.5%</td>
</tr>
<tr>
<td>14</td>
<td>7209</td>
<td>FI-RI Iron &amp; Na Steel Nun600Mm Wd Cold-Rl, No Clar</td>
<td>4,198</td>
<td>119</td>
<td>560</td>
<td>775</td>
<td>526</td>
<td>27</td>
<td>2.8%</td>
</tr>
<tr>
<td>15</td>
<td>7210</td>
<td>FI-RI Iron &amp; Na Steel Nun600Mm Wd, Clad Etc</td>
<td>3,954</td>
<td>30</td>
<td>1,145</td>
<td>875</td>
<td>675</td>
<td>68</td>
<td>0.8%</td>
</tr>
<tr>
<td>16</td>
<td>8534</td>
<td>Printed Circuits</td>
<td>3,638</td>
<td>53</td>
<td>627</td>
<td>1,149</td>
<td>500</td>
<td>12</td>
<td>1.4%</td>
</tr>
<tr>
<td>17</td>
<td>7228</td>
<td>FI-RI Iron &amp; Na Steel Nun600Mm Wd Hot-Rl, Not Clad</td>
<td>3,584</td>
<td>148</td>
<td>555</td>
<td>252</td>
<td>461</td>
<td>41</td>
<td>4.1%</td>
</tr>
<tr>
<td>18</td>
<td>8802</td>
<td>Aircraft, Powered; Spacecraft &amp; Launch Vehicles</td>
<td>3,501</td>
<td>1,876</td>
<td>-</td>
<td>-</td>
<td>348</td>
<td>53.6%</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>8504</td>
<td>Elec Trans, Static Conv &amp; Induct, Adp Pwr Supp, Pt</td>
<td>3,459</td>
<td>222</td>
<td>583</td>
<td>364</td>
<td>281</td>
<td>305</td>
<td>6.4%</td>
</tr>
<tr>
<td>20</td>
<td>3903</td>
<td>Polymers Of Styrene, In Primary Forms</td>
<td>3,434</td>
<td>39</td>
<td>379</td>
<td>1,295</td>
<td>897</td>
<td>19</td>
<td>1.1%</td>
</tr>
<tr>
<td>21</td>
<td>3901</td>
<td>Polymers Of Ethylene, In Primary Forms</td>
<td>3,425</td>
<td>151</td>
<td>250</td>
<td>380</td>
<td>657</td>
<td>70</td>
<td>4.4%</td>
</tr>
<tr>
<td>22</td>
<td>7219</td>
<td>FI-RI Stainless Steel Products, Not Und 600Mm Wide</td>
<td>3,333</td>
<td>96</td>
<td>535</td>
<td>764</td>
<td>779</td>
<td>161</td>
<td>2.9%</td>
</tr>
<tr>
<td>23</td>
<td>2917</td>
<td>Polycarboxylic Acids &amp; Anhyd Etc, Halog, Sulf Etc</td>
<td>3,290</td>
<td>35</td>
<td>439</td>
<td>842</td>
<td>1,093</td>
<td>35</td>
<td>1.1%</td>
</tr>
<tr>
<td>24</td>
<td>8536</td>
<td>Electrical Apparatus For Switching Etc, Nov 1000 V</td>
<td>3,234</td>
<td>238</td>
<td>899</td>
<td>326</td>
<td>184</td>
<td>214</td>
<td>7.4%</td>
</tr>
</tbody>
</table>
### China’s Imports from the World and U.S. Share

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

<table>
<thead>
<tr>
<th>Rank</th>
<th>HS</th>
<th>Commodity Description</th>
<th>World</th>
<th>U.S. %</th>
<th>U.S.</th>
<th>Japan</th>
<th>Taiwan</th>
<th>Korea</th>
<th>Germany</th>
<th>of World</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>413,096</td>
<td>33,883</td>
<td>74,204</td>
<td>49,364</td>
<td>43,161</td>
<td>24,392</td>
</tr>
<tr>
<td>11</td>
<td>1201</td>
<td>Soybeans, Whether Or Not Broken</td>
<td></td>
<td></td>
<td>5,417</td>
<td>2,217</td>
<td>-</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>19</td>
<td>8802</td>
<td>Aircraft, Powered; Spacecraft &amp; Launch Vehicles</td>
<td>3,501</td>
<td>1,876</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>348</td>
<td>53.6%</td>
</tr>
<tr>
<td>1</td>
<td>8542</td>
<td>Electronic Integrated Circuits &amp; Microassembly, Pts</td>
<td>41,858</td>
<td>1,867</td>
<td>8,169</td>
<td>9,794</td>
<td>4,453</td>
<td>570</td>
<td>4.5%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>8471</td>
<td>Automatic Data Process Machines; Magn Reader Etc</td>
<td>11,418</td>
<td>1,390</td>
<td>859</td>
<td>754</td>
<td>709</td>
<td>158</td>
<td>12.2%</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>3818</td>
<td>Chem Elem Doped, Used In Electron, Discs Wafers Etc</td>
<td>1,617</td>
<td>860</td>
<td>88</td>
<td>161</td>
<td>27</td>
<td>24</td>
<td>53.2%</td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>4707</td>
<td>Waste And Scrap Of Paper Or Paperboard</td>
<td>1,232</td>
<td>782</td>
<td>117</td>
<td>1</td>
<td>12</td>
<td>34</td>
<td>63.5%</td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>5201</td>
<td>Cotton, Not Carded Or Combed</td>
<td>1,163</td>
<td>660</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>56.8%</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>8479</td>
<td>Machines Etc Having Individual Functions Nesoi, Pt</td>
<td>6,342</td>
<td>659</td>
<td>2,407</td>
<td>576</td>
<td>485</td>
<td>1,021</td>
<td>10.4%</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>8517</td>
<td>Electric Apparatus For Line Telephony Etc, Parts</td>
<td>3,088</td>
<td>638</td>
<td>220</td>
<td>152</td>
<td>176</td>
<td>132</td>
<td>20.6%</td>
<td></td>
</tr>
<tr>
<td>129</td>
<td>4101</td>
<td>Raw Hides &amp; Skins Of Bovine Or Equine Animals</td>
<td>712</td>
<td>488</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>68.6%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>8473</td>
<td>Parts Etc For Typewriters &amp; Other Office Machines</td>
<td>12,082</td>
<td>470</td>
<td>2,090</td>
<td>1,668</td>
<td>860</td>
<td>55</td>
<td>3.9%</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>3105</td>
<td>M Or Ch Fertiliz, Nun2O3Ei; Fert Nesoi; Fert Pack</td>
<td>924</td>
<td>463</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>50.2%</td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>9027</td>
<td>Inst Etc For Physical Etc Anal Etc; Microtome; Pts</td>
<td>1,186</td>
<td>460</td>
<td>219</td>
<td>13</td>
<td>7</td>
<td>158</td>
<td>38.8%</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>7204</td>
<td>Ferrous Waste &amp; Scrap; Remelt Scr Iron/Steel Ingot</td>
<td>1,405</td>
<td>456</td>
<td>223</td>
<td>29</td>
<td>21</td>
<td>43</td>
<td>32.4%</td>
<td></td>
</tr>
<tr>
<td>168</td>
<td>0207</td>
<td>Meat &amp; Ed Offal Of Poultry, Fresh, Chill Or Frozen</td>
<td>462</td>
<td>446</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>96.6%</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>8803</td>
<td>Parts Of Balloons Etc, Aircraft, Spacecraft Etc</td>
<td>934</td>
<td>433</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>17</td>
<td>46.3%</td>
</tr>
<tr>
<td>70</td>
<td>9030</td>
<td>Oscilloscopes, Spectrum Analyzers Etc, Parts Etc</td>
<td>1,221</td>
<td>420</td>
<td>278</td>
<td>97</td>
<td>49</td>
<td>128</td>
<td>34.4%</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>8541</td>
<td>Semiconductor Devices; Light-Emit Diodes Etc, Pts</td>
<td>7,532</td>
<td>389</td>
<td>2,429</td>
<td>1,251</td>
<td>477</td>
<td>127</td>
<td>5.2%</td>
<td></td>
</tr>
<tr>
<td>89</td>
<td>9018</td>
<td>Medical, Surgical, Dental Or Vet Inst, No Elec, Pt</td>
<td>1,059</td>
<td>388</td>
<td>220</td>
<td>7</td>
<td>29</td>
<td>185</td>
<td>36.6%</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>8414</td>
<td>Air Or Vac Pumps, Compr &amp; Fans; Hoods &amp; Fans; Pts</td>
<td>2,306</td>
<td>374</td>
<td>428</td>
<td>209</td>
<td>243</td>
<td>239</td>
<td>16.2%</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>9031</td>
<td>Machines, Nesoi In Chapter 90; Profile Project, Pt</td>
<td>1,728</td>
<td>374</td>
<td>460</td>
<td>125</td>
<td>115</td>
<td>225</td>
<td>21.6%</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>3907</td>
<td>Polymers, Epoxides &amp; Polyesters, Primary Forms</td>
<td>2,837</td>
<td>345</td>
<td>543</td>
<td>677</td>
<td>319</td>
<td>77</td>
<td>12.2%</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>8529</td>
<td>Parts For Television, Radio And Radar Apparatus</td>
<td>7,215</td>
<td>328</td>
<td>1,983</td>
<td>464</td>
<td>1,534</td>
<td>202</td>
<td>4.5%</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>7404</td>
<td>Copper Waste And Scrap</td>
<td>1,328</td>
<td>293</td>
<td>381</td>
<td>30</td>
<td>53</td>
<td>54</td>
<td>22.0%</td>
<td></td>
</tr>
<tr>
<td>103</td>
<td>8418</td>
<td>Refrigerators, Freezers Etc; Heat Pumps Nesoi, Pts</td>
<td>861</td>
<td>273</td>
<td>200</td>
<td>14</td>
<td>34</td>
<td>19</td>
<td>31.7%</td>
<td></td>
</tr>
</tbody>
</table>
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.
Specific examples of non-tariff barriers to trade cited by U.S. industries in comments to USTR:

- **Motorcycles** – internal policies 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.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8471</td>
<td>Automatic Data Processing Machines And Units Thereof, Magnetic Or Optical Readers, Machines For Transcribing And Processing Coded Data, Nesoi</td>
<td>5,954,769</td>
<td>9,120,174</td>
<td>15,263,396</td>
<td>7,478,337</td>
<td>12,707,644</td>
</tr>
<tr>
<td>2</td>
<td>9503</td>
<td>Toys Nesoi; Scale Models Etc., Puzzles; Parts And Accessories Thereof</td>
<td>5,946,518</td>
<td>6,418,282</td>
<td>6,617,510</td>
<td>2,943,876</td>
<td>3,177,134</td>
</tr>
<tr>
<td>3</td>
<td>6403</td>
<td>Footwear, With Outer Soles Of Rubber, Plastics, Leather Or Composition Leather And Uppers Of Leather</td>
<td>5,524,808</td>
<td>6,118,092</td>
<td>6,508,579</td>
<td>3,928,836</td>
<td>4,018,352</td>
</tr>
<tr>
<td>4</td>
<td>8473</td>
<td>Parts And Accessories Nesoi For Typewriters And Other Office Machines Of Headings 8469 To 8472</td>
<td>3,977,842</td>
<td>5,149,639</td>
<td>6,424,438</td>
<td>3,392,752</td>
<td>4,802,038</td>
</tr>
<tr>
<td>5</td>
<td>9403</td>
<td>Furniture, Nesoi (Other Than Seats, Medical, Surgical, Dental Or Veterinary Furniture) And Parts Thereof</td>
<td>2,931,427</td>
<td>4,280,916</td>
<td>5,281,311</td>
<td>3,019,533</td>
<td>3,615,569</td>
</tr>
<tr>
<td>6</td>
<td>8525</td>
<td>Transmission Apparatus For Radiotelephony, Radiotelegraphy, Radiobroadcasting Or Tv; Tv Cameras, Still Image Video Cameras And Recorders</td>
<td>1,374,149</td>
<td>2,845,397</td>
<td>4,517,212</td>
<td>1,971,067</td>
<td>3,887,997</td>
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<tr>
<td>7</td>
<td>9504</td>
<td>Articles For Arcade, Table Or Parlor Games, Including Pinball Machines, Billiards Etc., Automatic Bowling Alley Equipment; Parts And Accessories</td>
<td>1,518,046</td>
<td>2,650,187</td>
<td>3,738,689</td>
<td>1,456,965</td>
<td>1,303,413</td>
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<tr>
<td>8</td>
<td>4202</td>
<td>Travel Goods, Vanity Cases, Binocular And Camera Cases, Handbags, Wallets, Cutlery Cases And Similar Containers, Of Various Specified Materials</td>
<td>2,191,016</td>
<td>2,799,488</td>
<td>3,192,361</td>
<td>1,811,998</td>
<td>2,214,448</td>
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<tr>
<td>9</td>
<td>9405</td>
<td>Lamps And Lighting Fittings And Parts Thereof Nesoi; Illuminated Signs Etc. With A Fixed Light Source And Parts Thereof Nesoi</td>
<td>2,458,887</td>
<td>2,939,526</td>
<td>3,024,560</td>
<td>1,633,454</td>
<td>1,826,547</td>
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<tr>
<td>10</td>
<td>9401</td>
<td>Seats (Other Than Barber, Dental And Similar Chairs), Whether Or Not Convertible Into Beds, And Parts Thereof</td>
<td>1,732,899</td>
<td>2,188,903</td>
<td>2,810,120</td>
<td>1,671,107</td>
<td>2,233,636</td>
</tr>
</tbody>
</table>
Dispute Resolution in China
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)
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
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.
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.
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 policies 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.
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

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

<table>
<thead>
<tr>
<th>Remedy</th>
<th>Trade Problem Addressed</th>
<th>Criteria for Remedy</th>
<th>Form of Remedy</th>
<th>Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 301</td>
<td>Foreign government policy/practice</td>
<td>Violates trade agreements</td>
<td>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</td>
<td>USTR (subject to President's direction)</td>
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<tr>
<td></td>
<td>Unjustifiable, unreasonable, or discriminatory trade practices</td>
<td>Burdens or restricts U.S. commerce</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 337</td>
<td>Unfair methods of competition and unfair acts affecting imports</td>
<td>Destroys or substantially injures domestic industry</td>
<td>Exclusion orders and/or cease and desist orders</td>
<td>ITC</td>
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<tr>
<td></td>
<td>Imports</td>
<td>Infringe patents, trademarks, copyright or mask work</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remedy</td>
<td>Trade Problem Addressed</td>
<td>Criteria for Remedy</td>
<td>Form of Remedy</td>
<td>Agency</td>
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</tr>
<tr>
<td>Section 232</td>
<td>Imports</td>
<td>Threatens to impair national security</td>
<td>Action to &quot;adjust&quot; imports so as not to threaten to impair national security</td>
<td>DOC - whether imports threaten to impair national security</td>
</tr>
<tr>
<td>China Product-Specific Safeguard (Section 421)</td>
<td>Import surge from China</td>
<td>Market disruption</td>
<td>Increased duties or other import restrictions</td>
<td>President - determines nature and duration of remedy</td>
</tr>
<tr>
<td>China Textile Safeguard</td>
<td>Imports from China</td>
<td>Market disruption</td>
<td>Quantitative restrictions</td>
<td>CITA</td>
</tr>
</tbody>
</table>

*Slide No. 181*
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
- 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

Slide No. 182
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.
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.
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