

Schapiro Exhibit 110 continued

of this notice, both to assess whether all government entities regularly publish their trade-related measures in the *MOFCOM Gazette* and whether all types of measures are being published. So far, adherence to the State Council's notice continues to be far from complete.

Public Comment

China made a number of transparency commitments in its accession agreement. One of the most important of these commitments concerned the procedures for adopting or revising laws and regulations affecting trade in goods, services, TRIPS or the control of foreign exchange. China agreed to provide a reasonable period for public comment on these new or modified laws and regulations before implementing them, except in certain specific instances, enumerated in China's accession agreement. China also agreed to translate all of its trade-related laws and regulations into one or more of the WTO languages (English, French and Spanish) and to publish them in an official journal.

The principal focus of China's first year of WTO membership was on its framework of laws and regulations governing trade in goods, trade in services, IPR and trade remedies. Most of this work took place at the central government level, with more than 2,500 trade-related laws and regulations reportedly being reviewed for WTO consistency. As a result of this initial review, China reportedly repealed more than 800 laws and regulations, while it issued almost 450 new or revised ones. In 2003, the central government continued this work, issuing more than 100 new or revised laws and regulations in an effort to meet China's WTO obligations. China's 31 provinces and autonomous regions and 49 major cities also reportedly made progress, as they repealed nearly 500 trade-related measures and amended almost 200 more.

Despite the tremendous amount of work that China put into overhauling its framework of trade-related laws and regulations in 2002 and 2003, China's ministries and agencies still had a poor record of providing an opportunity for public comment *before* new or modified laws and regulations were implemented. Although the State Council issued regulations in December 2001 addressing the procedures for the formulation of administrative regulations and rules and expressly allowing public comment, many of China's ministries and agencies in 2002 continued to follow the practice prior to China's accession to the WTO, and no notable progress took place in 2003. Typically, the ministry or agency drafting a new or revised law or regulation consulted with and submitted drafts to other ministries and agencies as well as Chinese experts and affected Chinese companies. At times, it also consulted with select foreign companies, although it would not necessarily share drafts with them. As a result, only a small proportion of new or revised laws and regulations were issued after a period for public comment, and even in those cases the amount of time provided for public comment was generally too short.

In 2004, some improvements took place, particularly on the part of MOFCOM, which began following the rules set forth in its *Provisional Regulations on Administrative Transparency*, issued in November 2003. Those rules could potentially serve as a model for other ministries and agencies seeking to improve their transparency.

Nevertheless, basic compliance with China's notice-and-comment commitment continued to be uneven in the ensuing years, including 2007. In the area of intellectual property rights, for example, several ministries and agencies circulated proposed measures for public comment. The National People's Congress also circulated a proposed *Labor Contract Law* for public comment in March 2006. However, China did not provide for public comment on other major trade-related laws and regulations, such as the April 2005 *Measures on the Importation of Parts for Entire Automobiles*, which has since given rise to a WTO dispute brought by the United States, the EC and Canada, CIRC's December 2005 *Regulations on the Administration of the Reinsurance Business*, the August 2006 M&A regulations, Xinhua's September 2006 *Administrative Measures on News and Information Release by Foreign News Agencies within China*, or the October 2007 *Sectoral Guidelines Catalogue for Foreign Investment*. In addition, China did not seek public input on new rules on telecommunications value-added services issued by MII in July 2006, or new rules on qualification requirements for senior managers of insurance companies issued by CIRC in July 2006. The United States and other WTO members have also been seeking the opportunity to comment on a number of significant new measures, such as the draft *Postal Law* and the draft *Telecommunications Law*, so far without success.

In numerous bilateral meetings with the State Council, MOFCOM and other Chinese ministries since China's WTO accession, including high-level meetings such as JCCT meetings and SED meetings, the United States has emphasized the importance of China's adherence to the notice-and-comment commitment in China's accession agreement, both in terms of fairness to WTO members and the benefits that would accrue to China. Together with other WTO members, the United States has also raised this issue repeatedly during regular WTO meetings and as part of the annual transitional reviews conducted before various WTO councils and committees.

At the April 2006 JCCT meeting, which took place shortly after China finally adopted a single official journal, the United States put China on notice that the next step China needed to take was to use that journal to implement a mandatory notice-and-comment practice for all new or modified trade-related laws and regulations. Subsequently, at the SED meeting in December 2006, the United States and China agreed to make transparency, including notice-and-comment procedures and other rulemaking issues, a topic for discussion in future SED meetings. These discussions began at the May 2007 SED meeting and are scheduled to continue during the SED meeting scheduled for December 2007. At the same time, the United States has continued to provide technical assistance to facilitate Chinese government officials' understanding of the workings, and benefits, of an open and transparent rulemaking process. In July 2006, for example, the United States put on a seminar for Chinese government officials on the operations of the Federal Register. In addition, during 2007, the United States provided detailed information to Chinese government officials explaining how U.S. agencies examine voluminous public comments received during rulemaking proceedings and how U.S. agencies conduct cost-benefit analyses.

China's ministries and agencies continue to have a much better record when it comes to making new or revised laws and regulations available to the public after they have been finalized. In accordance with State Council regulations issued in December 2001, which require the

publication of new or amended regulations thirty days before their implementation, almost all new or revised laws and regulations have been available (in Chinese) soon after issuance and prior to their effective date, an improvement over pre-WTO accession practice. Indeed, these laws and regulations are often published not only in official journals, but also on the Internet. At the same time, however, China continues to lag behind in its obligation to provide translations of these laws and regulations.

Enquiry Points

Another important transparency commitment requires China to establish enquiry points, where any WTO member or foreign company or individual may obtain information. As previously reported, China complied with this obligation by establishing a WTO Enquiry and Notification Center, now operated by MOFCOM's Department of WTO Affairs, in January 2002. Other ministries and agencies have also established formal or informal, subject-specific enquiry points. Since the creation of these various enquiry points, U.S. companies have generally found these various enquiry points to be responsive and helpful, and they have generally received timely replies. In addition, some ministries and agencies have created websites to provide answers to frequently asked questions as well as further guidance and information.

Uniform Application of Laws

In its WTO accession agreement, China committed, at all levels of government, to apply, implement and administer its laws, regulations and other measures relating to trade in goods and services in a uniform and impartial manner throughout China, including in special economic areas. In support of this commitment, China agreed to establish an internal review mechanism to investigate and address cases of non-uniform application of laws based on information provided by companies or individuals.

As previously reported, in China's first year of WTO membership, the central government launched an extensive campaign to inform and educate both central and local government officials and State-owned enterprise managers about WTO rules and their benefits. In addition, several provinces and municipalities established their own WTO centers, designed to supplement the central government's efforts and to position themselves so that they would be able to take full advantage of the benefits of China's WTO membership. In 2002, China also established an internal review mechanism, now overseen by MOFCOM's Department of WTO Affairs, to handle cases of non-uniform application of laws, although the actual workings of this mechanism remain unclear.

During 2007, as in prior years, some problems with uniformity persisted. These problems are discussed above in the sections on Customs and Trade Administration, Taxation, Investment and Intellectual Property Rights.

Judicial Review

In its WTO accession agreement, China agreed to establish tribunals for the review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings on trade-related matters. These tribunals must be impartial and independent of the government authorities entrusted with the administrative enforcement in question, and their review procedures must include the right of appeal.

Beginning before China's accession to the WTO, China had taken steps to improve the quality of its judges. For example, in 1999, the Supreme People's Court began requiring judges to be appointed based on merit and educational background and experience, rather than through politics or favoritism. However, existing judges, many of whom have had no legal training, were grandfathered in. In part because of this situation, many U.S. companies in 2007 continued to express serious concern about the independence of China's judiciary. In their experience and observation, Chinese judges continue to be influenced by political, government or business pressures, particularly outside of China's big cities.

Meanwhile, in 2007, the United States continued to monitor how the courts designated by the Supreme People's Court's *Rules on Certain Issues Related to Hearings of International Trade Administrative Cases*, which went into effect in October 2002, have handled cases involving administrative agency decisions relating to international trade in goods or services or intellectual property rights. So far, however, there continues to be little data, as few foreign companies have had experience with these courts.

APPENDIX 1

List of Written Submissions Received in Response to Request for Public Comment by the Trade Policy Staff Committee on China WTO Compliance

1. U.S.-China Business Council
2. U.S. Chamber of Commerce
3. International Intellectual Property Alliance
4. Coalition of Service Industries
5. National Cotton Council
6. Norandal U.S.A., Inc.
7. U.S. Council for International Business
8. Society of Plastics
9. National Electrical Manufacturers Association
10. American Iron and Steel Institute
11. American Forest & Paper Association
12. Nucor Corporation and the Steel Manufacturers Association
13. Wal-Mart Stores, Inc.
14. American Dehydrated Onion and Garlic Association

APPENDIX 2

**List of Witnesses
Testifying at the Public Hearing
before the Trade Policy Staff Committee
on China WTO Compliance
Washington, D.C.
September 27, 2007**

1. Erin Ennis
Vice President
U.S.-China Business Council
2. Myron Brilliant
Vice President, East Asia
U.S. Chamber of Commerce
3. Eric H. Smith
President
International Intellectual Property Alliance
4. John Maguire
Senior Vice President
National Cotton Council of America
5. Alan Price
On Behalf of Nucor Corporation and
the Steel Manufacturers Association
6. Scott Croft
President
Norandal U.S.A., Inc