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The China 301 on Market Access: A Prelude to GATT Membership?

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In the last fifteen years¹ there has been a rapid expansion of trade between the United States and the People's Republic of China.² Difficulties, however, have arisen from time to time between the two nations, prompting the U.S. government to threaten China with trade sanctions.³ While there are several relevant political and economic issues,⁴ this Note focuses on U.S. application of Section 301 of the Trade Act of 1974⁵ in dealing

1. On January 1, 1979, the United States and China normalized their bilateral relationship pursuant to the Joint Communiqué on the Establishment of Diplomatic Relations. See Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China, Jan. 1, 1979, 79 DEPT ST. BULL., Jan. 1979, at 25. Soon thereafter, on July 7, 1979, the United States and China signed an Agreement on Trade Relations. See Agreement on Trade Relations between the United States of America and the People's Republic of China, July 7, 1979, U.S.-P.R.C., 31 U.S.T. 4651.

2. According to the Office of the United States Trade Representative (USTR), trade between the United States and China has increased from \$2.4 billion in 1979 to \$33.2 billion in 1992, at an average of more than 100 percent annually for the past 13 years. See OFF. OF U.S. TRADE REP., 1986 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS (1986) at 63 [hereinafter 1986 NTE REPORT]; OFF. OF U.S. TRADE REP., 1993 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS (1993) at 49 [hereinafter 1993 NTE REPORT].

3. For example, the United States has threatened China with sanctions in response to some of China's sale of arms and its purported use of prison labor. For a summary of U.S. economic sanctions specifically in the case of China, see MICHAEL P. MALLOY, ECONOMIC SANCTIONS AND U.S. TRADE 194-97, 639-44 (1990).

4. The most controversial issue is the annual presidential renewal of most-favored-nation (MFN) trading status to China. While this debate centers on political issues such as human rights, its underlying impact on bilateral trade relations cannot be ignored. For a background summary of China's MFN status, see Lucille A. Barale, *U.S. MFN Renewal for China: The Jackson-Vanik Amendment*, 12 E. ASIAN EXEC. REP. 6 (1990), available in LEXIS, ITRADE library, EASIAN File. See also *infra* note 25 and accompanying text.

5. Trade Act of 1974, Pub. L. No. 93-618, tit. III, § 301, 88 Stat. 1978, 2041 (codified as amended 19 U.S.C. § 2411 (1988)). Congress enacted the 1974 Trade Act for the purpose of fostering the economic growth of, and full employment in, the United States and strengthening economic relations between the United States and foreign countries through open and nondiscriminatory world

with China's allegedly unfair trade practices. The U.S. government has initiated two Section 301 actions against China, and both actions have culminated in a memorandum of understanding on specific trade issues.⁶

The basic objective of Section 301 is to provide the United States with the leverage necessary to negotiate agreements with foreign countries which resolve trade disputes and, thus, open foreign markets to U.S. firms.⁷ Section 301 gives the United States Trade Representative (USTR) both mandatory and discretionary authority to respond to unfair trade acts, policies, or practices by any foreign government.⁸ The USTR has

trade. 21A AM. JUR. 2D Customs Duties, etc. § 20 (1981). Other purposes of the 1974 Trade Act relevant to Section 301 include harmonizing, reducing, and eliminating barriers to trade on a basis which assures substantially equivalent competitive opportunities for U.S. commerce; establishing fairness and equity in international trading relations, including reform of the GATT; and opening up market opportunities for U.S. commerce in non-market countries. 19 U.S.C. § 2102 (1988). For easy reference, actions taken under these statutory provisions are commonly referred to as "Section 301" actions.

6. The two actions taken were the "Special 301" investigation on intellectual property protection and the Section 301 investigation on market access. Both actions resulted in the signing of a memorandum of understanding on the resolution of specific trade issues. See Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China on the Protection of Intellectual Property, Jan. 17, 1992, available in WESTLAW, USTREATISES Library, TREATY File; People's Republic of China-United States: Memorandum of Understanding Concerning Market Access, Oct. 10, 1992, 31 I.L.M. 1274 [hereinafter MOU].

This Note focuses only on the Section 301 action relating to market access of U.S. exports to China and the resulting MOU. For a discussion of the "Special 301" action and the resulting MOU on intellectual property protection in China see generally Xiao-Lin Zhou, *U.S.-China Trade Dispute and China's Intellectual Property Rights Protection*, 24 N.Y.U. INT'L LAW & POL. 1115 (1992). In addition, for a detailed analysis of and a practical approach to the current status of intellectual property protection in China, see Richard L. Thurston, *Country Risk Management: China and Intellectual Property Protection*, 27 INT'L L. 51-64 (1993).

7. 19 U.S.C. § 2411(d)(3)(B). The Congress intended to allow the USTR to "speak with a loud, clear voice" in negotiating agreements with foreign countries to resolve trade disputes. 134 CONG. REC. § 10,672 (daily ed. Aug. 3, 1988). The transfer of authority from the President to the USTR to negotiate agreements "strengthens the negotiating authority and credibility of the USTR." HOUSE COMM. ON WAYS AND MEANS, TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987: REPORT TO ACCOMPANY H.R. 3, H.R. REP. NO. 40, 100th Cong., 1st Sess. 59 (1987).

8. 19 U.S.C. § 2411. The original provisions of the current Section 301 were enacted as part of the 1974 Trade Act, giving the President discretionary authority to retaliate against unfair trade practices by foreign countries. See 19 U.S.C. §§ 2411-2416 (1982 & Supp. III 1985). It also gave the President extraordinary "negotiating leverage" to ensure compliance by foreign governments with trade agreements and to eliminate trade restrictions and other

mandatory authority to take action if the rights of the United States under a trade agreement are denied, or if the trade practices of any foreign government are "unjustifiable and burden or restrict United States commerce."⁹ The USTR also has discretionary authority to take action against a foreign country's acts, policies, or practices that are "unreasonable or discriminatory and burden or restrict United States commerce."¹⁰ In resolving the market access dispute, the USTR utilized its discretionary authority under Section 301¹¹ and entered into the Memorandum of Understanding (MOU) with China.¹²

barriers. See SENATE FINANCE COMM. REP. ON THE TRADE REFORM ACT OF 1974, S. REP. NO. 1298, 93rd Cong., 2d Sess. 164, 167-168 (1974). Following the 1979 and 1984 amendments (Trade Agreements Act of 1979, Pub. L. No. 96-39, § 901, 93 Stat. 144 (1979); Trade and Tariff Act of 1984, Pub. L. No. 98-573, §§ 304, 307(b), 98 Stat. 2948 (1984)), the 1988 amendment (the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)) delegated the Section 301 authority further to the USTR, mandated the USTR to retaliate against violations of trade agreements or unjustifiable acts by foreign countries, created various versions of Section 301 actions, and expanded the list of unreasonable practices actionable under Section 301. See 19 U.S.C. § 2411.

Section 301 as amended is the major U.S. trade law designed to "pry open foreign markets to U.S. investment and exports of goods and services, and to achieve adequate and effective protection abroad for intellectual property rights." See Judith H. Bello & Alan F. Holmer, *The Heart of the 1988 Trade Act: A Legislative History of the Amendments to Section 301*, 25 STAN. J. INT'L L. 1, 2 (1988). Although the United States has rarely exercised its ultimate authority of retaliatory sanctions under the 301 provisions, the mere threat of using them has given the United States tremendous bargaining power in settling disputed trade issues. See Jean Heilman Grier, *The Use of Section 301 to Open Japanese Markets to Foreign Firms*, 17 N.C. J. INT'L L. & COM. REG. 1, 4-10 (1992).

9. 19 U.S.C. § 2411(a)(1). An act, policy, or practice is unjustifiable if it is "in violation of, or inconsistent with, the international legal rights of the United States." *Id.* § 2411(d)(4)(a). "Acts, policies and practices that are discriminatory include, when appropriate, any act, policy or practice which denies national or most-favored-nation treatment to United States goods, services, or investment." *Id.* § 2411(d)(5).

Congressional debate over the 1988 amendment to Section 301 reflected legislative efforts to strengthen the statutory authority by mandating retaliation to the violation of, or denial of U.S. benefits under, a trade agreement. See Bello & Holmer, *supra* note 8, at 10-18.

10. 19 U.S.C. § 2411(b)(1). An act, policy, or practice of a foreign government is unreasonable if it, *inter alia*, denies "fair and equitable market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms." *Id.* § 2411(d)(3)(B)(i)(III).

11. 19 U.S.C. § 2411(b).

12. The authority which the USTR used to reach the MOU with China is expressly provided in the statute. With the leverage under either the mandatory or discretionary authority of Section 301, the USTR is empowered

The China 301 is unique in its dual purpose of resolving short-term trade issues for the United States and promoting long-term economic reform in China. In furtherance of this dual purpose, the USTR's goal was to reach a plausible trade agreement, the MOU, which would serve as a legal framework for China's long-term reform.¹³ Within this framework, China has committed to an overall reform of its trade system in exchange for a commitment by the United States to "staunchly support"¹⁴ China's efforts to become a member of the General Agreement on Tariffs and Trade (GATT).¹⁵ Nevertheless, the United States was prepared to take immediate corrective action if the negotia-

to: (1) stop fulfilling trade agreement obligations to the country concerned, (2) impose import restrictions on products from that country, or (3) enter into binding agreements which commit the country in violation to eliminate its unjustifiable or unreasonable trade practices and provide the United States with compensatory trade benefits. 19 U.S.C. § 2411(c).

13. The purpose of this strategy is to "underpin the [trade] relationship with a framework based on the rule of law." Lee M. Sands and Deborah M. Lehr, *Expanding Trade and Opening Markets in China*, 20 CHINA BUS. REV. 10, 11 (1993).

14. *Id.* See also MOU, *supra* note 6, at 1279.

15. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT]. China was one of the original twenty-three Contracting Parties to the GATT when it came into force under the Protocol of Provisional Application in 1948. In 1950, after the founding of the People's Republic of China on the mainland, the Nationalist government in Taiwan sent a cable to the GATT Secretariat withdrawing China's membership. Thereafter, the Taiwan government took an observer position in GATT from 1965 to 1971. China has not had its Contracting Party status since 1950. Wenguo Cai, *China's GATT Membership: Selected Legal and Political Issues*, 26 J. WORLD TRADE 35, 36-37 (1992). China argues that the withdrawal in 1950 was invalid because it was from a government not then in control of China. China's current position is that its GATT membership should be resumed because its membership in other major international organizations, such as the United Nations, the International Monetary Fund, and the World Bank, has been activated. In the early 1980s, China became an observer and joined the GATT MultiFiber Arrangement. *Id.* at 59. In July 1986, China formally submitted its GATT application and requested a working party to consider conditions for its membership. Negotiations for China's GATT membership have focused on the requirements under GATT Article XXXIII. *Id.* China has recently stated that it will not rush to rejoin GATT if conditions are not ripe. See *China Said to Scale Down Expectation of Early Accession to Gatt*, *Sources Said*, Int'l Trade Daily (BNA), Aug. 16, 1993, available in LEXIS, ITRADE Library, BNAITD File.

For further discussion on China and GATT, see Cai, *supra* at 35 (1992); Robert E. Herzstein, *China and the GATT: Legal and Policy Issues Raised by China's Participation in GATT*, 18 LAW & POL'Y INT'L BUS. 371 (1986); Chung-Chou Li, *Resumption of China's GATT Membership*, 21 J. WORLD TRADE 25 (1987); Peter C. Sheridan, *The Accession to GATT of the People's Republic of China: New Challenges for the World Trading Regime*, 23 WILLIAMETTE L. REV. 843 (1987).

tions failed.¹⁶ This strategy was unprecedented as it addressed U.S. trade grievances with China by accommodating China's needs to ultimately conform with the world economy. To fully understand the China 301, it is important to look beyond both the mechanics of the 301 action and its impact on the bilateral relationship between the United States and China.¹⁷

This Note examines the significance of the China 301 on market access. Part I identifies the disputed issues, the justifications of the United States for bringing the action, and China's reactions. Part II illustrates how GATT principles guided the resolution of trade issues in the MOU. Part III evaluates the implementing process of the MOU and assesses the MOU's significance in a future China-GATT relationship. The Note concludes that the MOU, and the 301 negotiations that led to its signing, should serve as a model for dispute settlement during the initial period of China's GATT membership.

I. THE MARKET ACCESS DISPUTE

The 301 action against China on market access officially commenced on October 10, 1991 and ended one year later on Oc-

16. The USTR was "fully prepared to deny China access to portions of the lucrative U.S. market if [the] agreement had not been reached." Sands & Lehr, *supra* note 13, at 11. See also Off. of U.S. Trade Rep., Proposed Determinations Regarding Certain Market Access Barriers of the People's Republic of China: Request for Public Comment and Public Hearing, 57 Fed. Reg. 38,912 and ann. (Aug. 27, 1992)[hereinafter Proposed Determinations].

17. There has been no literature on this topic thus far. However, some practitioners have recently addressed the relevant U.S.-China trade issues. For a background report of the two 301 actions against China, see Lucille Barale, *Section 301 Investigations: Using U.S. Laws to Address China's Unfair Trade Practices*, 13 E. ASIAN EXEC. REP. 9 (1991), available in LEXIS, ITRADE Library, EASIAN File. Barale's article was written soon after the USTR initiated the 301 action on market access and almost a year before the action was successfully concluded in October 1992. The author opined that 301 actions were unavoidable if the U.S. government was going to save China's MFN status, the foundation for the bilateral trade relations. *Id.* For a discussion of China's MFN status in connection with its future GATT membership, see T.K. Chang, *After China Joins the GATT: Will It Continue to Face Annual MFN Renewal Battles?* 15 E. ASIAN EXEC. REP. 9 (1993) available in LEXIS, ITRADE Library, EASIAN File. Chang calls for the legislative modification or abolishment of the Jackson-Vanik amendment (the statutory authority for presidential grant of MFN to China) after China joins the GATT in order for the United States to continue to advocate the universal application of GATT principles to all nations without exception. *Id.* For a summary of U.S.-China trade issues in general, see Jan Prybly, *How Should U.S. Handle Trade Issues With China?* 15 E. ASIAN EXEC. REP. 9 (1993), available in LEXIS, ITRADE Library, EASIAN File.

tober 10, 1992.¹⁸ Throughout the entire course of the 301 action, the bilateral negotiations were characterized by an active exchange of views and a mutual desire to resolve disputed issues. China resisted unilateral action by the United States in principle, but also wanted to seek the long term benefits of economic reform by reaching a trade agreement with the United States. The USTR, on the other hand, exercised its 301 authority cognizant of the unique circumstances created by China's economic reform. An understanding of the United States' reasons for bringing the 301 action, and China's response to the issues raised by the United States, is necessary in order to understand how the two countries eventually reconciled their differences.¹⁹

A. THE TRIGGERING ISSUE OF TRADE IMBALANCE

The trade imbalance between the United States and China has been increasing at an unprecedented rate. The United States had a \$10.4 billion trade deficit with China in 1990²⁰ and an \$18 billion trade deficit in 1992.²¹ It is estimated that the deficit will increase 30 percent to between \$23 and \$24 billion in 1993.²² Members of the U.S. Congress and the general public have become increasingly concerned about U.S. trade policy with China.²³ Not surprisingly, the increase in Chinese exports

18. For a history of the Section 301 action against China on market access issues, see *infra* Appendix — Chronology of Events.

19. In principle, China was opposed to Section 301, but was pragmatic enough to be flexible. Both sides realized that they had strong mutual economic interests and that their hard-earned relationship should be preserved and promoted. This mutual understanding allowed the USTR to follow the strategy of balancing the short-term need to eliminate unfair trade practices that Section 301 was designed to combat with the long-term goal of promoting U.S.-China relations. The agreement the two countries finally reached demonstrates that the fundamental quid pro quo for China's commitment to reform its trade policies is the United States' support for China's reentry into GATT. See, Cai Shikuan & Zhang Yijun, *Li Peng Meets U.S. Commerce Secretary: Hoping for U.S. Support on China's GATT Status*, PEOPLE'S DAILY, Dec. 19, 1992, at 1 (available in Chinese). During a meeting between Premier Li Ping and Commerce Secretary Barbara Franklin, Premier Li Ping expressed the hope that the United States would make practical efforts to support China's original contracting party status in GATT. Li promised that as soon as this status is resumed, China's market would become more open. *Id.*

20. See OFF. OF U.S. TRADE REP., 1990 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 43 (1991).

21. See 1993 NTE REPORT, *supra* note 2, at 49.

22. See *U.S. Gives China Until End of Year to Prove Adherence to Market Access Pact*, 10 Int'l Trade Rep. (BNA) 1975 (Oct. 27, 1993) (Statement by Deputy U.S. Trade Representative Charlene Barshefsky).

23. Barale, *supra* note 17, at 9.

to the United States has resulted in increasing complaints from American manufacturers.²⁴

Although China is a developing country and a nonmarket economy, it has received most-favored-nation (MFN) trading status from the United States since 1980,²⁵ and this nondiscriminatory treatment has contributed, at least in part, to the fact that China has the fastest-growing economy in the world. Despite the import benefits that the United States has been giving to China,²⁶ U.S. exports to China generally face restricted access to the Chinese market,²⁷ far from the level of access that Chinese goods enjoy in the United States.²⁸ This unequal access was highlighted by the record-breaking deficit from 1990 to 1992,²⁹ and prompted the U.S. government to take unilateral action under Section 301.³⁰

China's governmental measures to control its overheated economy also contributed to the trade imbalance with the United States. Such measures included import restrictions. After September 1988, China pursued an economic retrenchment policy to address its overwhelming economic problems which include high inflation, budget deficits, falling productivity, and increasing foreign debt.³¹ In the meantime, China became more

24. Petitions have been filed with the U.S. Department of Commerce and the International Trade Commission requesting that antidumping duties be imposed on various Chinese products because the non-market Chinese economy is centrally planned and prices on inputs may be set by the state. *Id.* at 9 n.2.

25. For a summary of the legal background surrounding the annual presidential renewal of MFN to China, see Barale, *supra* note 4. President Clinton has recently renewed China's MFN status with conditions for human rights improvement in China. *President Clinton Extends MFN to China, But Sets Conditions on Renewal Next Year*, 10 Int'l Trade Rep. (BNA) 886 (Jun. 2, 1993).

26. The U.S. market is more open to imports from China than is that of the European Community, Japan, or any other industrialized country. See Sands & Lehr, *supra* note 13, at 10. For example, except for textiles, Chinese goods are not subject to formidable U.S. standards or non-tariff barriers. *Id.*

27. At the time of the signing of the MOU, U.S. access to the Chinese market was limited by a wide range of import restrictions, import licensing requirements, and import standards and certification requirements. These were the major areas targeted by the USTR's 301 investigation. See Off. of U.S. Trade Rep., Initiation of Section 302 Investigation and Request for Public Comment: Barriers to Access to the Market of the People's Republic of China, 56 Fed. Reg. 51,943 (Oct. 16, 1991). While the entire action is authorized under Section 301, the actual authority to initiate investigation is provided in Section 302. 19 U.S.C. § 2412.

28. See Sands & Lehr, *supra* note 13, at 10.

29. See *supra* notes 20-22 and accompanying text.

30. See *supra* notes 7-12 and accompanying text.

31. On September 30, 1988, the Chinese Communist Party's Thirteenth Central Committee, 3rd Plenary Session, promulgated an economic retrench-

dependent on exports for economic growth, and accumulated foreign exchange reserves.³² This development renewed China's economic growth by reducing its import levels.³³ Consequently, in 1991 China had a \$12.7 billion trade surplus with the United States.³⁴

Three justifications put forth by China for its trade surplus with the United States are worth noting.³⁵ First, U.S. rules of origin categorize transshipment from Hong Kong and other regions as Chinese imports, resulting in a significant discrepancy in statistics.³⁶ Further, China contends that Chinese raw materials processed in Hong Kong should not be counted as Chinese exports.³⁷ Finally, many companies in Taiwan and Hong Kong, attracted by the cheap labor costs in China, transferred their production to China. Most of the end products were then

ment policy in order to reorganize China's economy, which was strained by the unprecedented rate of inflation. See 528 XINHUA MONTHLY 5 n.10 (1988) (available in Chinese). On November 19, 1989, the 5th Plenary Session of the Party's Thirteenth Central Committee further promoted the retrenchment policy by stressing reorganization in the areas of (1) balancing social demand with supply, (2) falling agricultural productivity; (3) inefficient infrastructure, (4) falling reserves in foreign currency and raw materials; and (5) high consumption. See *Party's Decision on Further Managing, Reorganizing and Deepening Reform*, in 1990 ANN. OF CHINA FOREIGN ECON. AFF. & TRADE 1, 1-13 (1991) (available in Chinese).

32. *Party's Decision on Further Managing, Reorganizing and Deepening Reform*, *supra* note 31.

33. *Id.*

34. According to the U.S. figure, in 1991 U.S. exports to China rose 30.8% to \$6.3 billion and U.S. imports from China rose 24.6% to \$19 billion. OFF. OF U.S. TRADE REP., 1992 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 44 (March 31, 1992).

35. See *MOFERT Spokesman Talks about Sino-U.S. Trade Issues*, 559 XINHUA MONTHLY 157-59 (1991) (available in Chinese). The spokesman from China's Ministry of Foreign Economic Relations and Trade (MOFERT) asserts that a large trade deficit is not necessarily a GATT violation, especially when the statistical figure from one side is inconsistent with that of the other. See *id.*

36. For example, the difference between U.S. and Chinese figures for Chinese imports into the United States for 1989 is \$7.61 billion, and the Hong Kong figure of transshipment from China to the United States is \$8.45 billion. *Id.* at 157. For 1990, the difference was \$10.02 billion, and the Hong Kong figure for the same year was \$10.47 billion. *Id.* The discrepancy between the U.S. and Chinese figures is offset by the Hong Kong figure, indicating that the Hong Kong transshipments are the cause. *Id.* Seventy percent of Chinese exports to the United States are transshipped through Hong Kong. See Pryblya, *supra* note 17.

37. China contends that for these raw materials processed in Hong Kong, it earns only 7-8 percent of the production cost or the labor input plus the value of the raw materials, resulting in no substantial export profit to China. See *MOFERT Spokesman Talks About Sino-U.S. Trade Issues*, *supra* note 35, at 157.

exported to the United States, contributing to China's export surplus with the United States.³⁸

China also argued that economic sanctions (including a ban on the export of high technology) imposed by the United States and other western countries after June 1989 caused a decrease in China's imports from the United States.³⁹ Moreover, China maintains that it has always emphasized Sino-U.S. trade relations and has never adopted or exercised any discriminatory policies.⁴⁰ Even after the U.S. announcement of economic sanctions, China did not take any retaliatory measures.⁴¹ China nevertheless reasserted its efforts to increase U.S. trade by sending large purchasing missions to the United States for imports of technology and equipment.⁴² China's position is consistent with its long-standing view that the economic stakes in the bilateral trade relationship are too large for either China or the United States to forgo.

Due to the seeming seriousness of the deficit problem and despite the probable discrepancies in statistics, the U.S. government exercised its discretionary power under Section 301 in an effort to improve market access in China.⁴³ Although the problem of a trade imbalance has long been at issue, the United States did not launch its 301 action until it perceived that China was determined and prepared to conform with GATT.⁴⁴

38. As a result, the transferred production caused the exports from Hong Kong and Taiwan to decline. *Id.* Furthermore, a new calculation of trade between the United States and the "Greater China" region (China, Hong Kong, and Taiwan) shows that while the U.S. trade deficit with China grew by 272 percent from 1987 to 1991 (U.S. figure), the U.S. deficit with Hong Kong and Taiwan declined by 82 and 48 percent, respectively, during the same period. Harry Harding, 19 CHINA BUS. REV. 18, 22 (May-June 1992). This resulted in a net reduction of the deficit with the "Greater China" region of nearly 60 percent. *Id.* This trend continued further in 1992. See generally Donald M. Anderson, *China Policy: Fostering U.S. Competitiveness and the Bilateral Relationship*, 20 CHINA BUS. REV. 10, 12 (Jan.-Feb. 1993).

39. See MOFERT Spokesman Talks About Sino-U.S. Trade Issues, *supra* note 35, at 157.

40. This contention conflicted with the United States' accusation that China's State Council Directive No. 56 required the telecommunications authority to sign contracts only with a group of three non-U.S. suppliers. See Joseph Massey, 301: *The Successful Resolution*, 19 CHINA BUS. REV. 10 (1992).

41. See MOFERT Spokesman Talks About Sino-U.S. Trade Issues, *supra* note 35, at 158.

42. *Id.* On this point, MOFERT stressed that all the "buying American" efforts were prompted by China's sincere attitude toward promoting trade relations with the United States. *Id.*

43. See Off. of U.S. Trade Rep., *supra* note 27.

44. *Id.*

B. PRINCIPLES VS. PRAGMATIC CONSIDERATIONS

China expressed strong disapproval of the 301 investigation in principle,⁴⁵ but did not threaten any retaliatory measures in response to the USTR's initiation of 301 action. China responded instead by inviting the U.S. trade negotiators to further meetings on market access, to be held at the end of October, 1991 in Beijing.⁴⁶ In light of China's gesture, it was necessary for the U.S. government to make some policy-balancing decisions.

First, it must be understood that, in principle, China generally resists any foreign pressures concerning how it should proceed with its economic reform. China does, however, welcome economic cooperation on level ground. On the one hand, the idea that the United States plays a dominant role in China's economic reform is hard for China to accept.⁴⁷ China adamantly rejected the idea that the 301 action would push China's trade system reform toward international standards.⁴⁸ On the other

45. The USTR launched a Section 301 investigation into market access and other issues relating to Chinese and U.S. trade in spite of China's attempt to answer U.S. concerns with an unofficial document on market access. For details of the Chinese reaction to the unilateral action by the USTR, see *China's Strong Dissatisfaction over Section 301 Investigation*, 34 BEIJING REV. 31-32 (1991). See also *China Expresses Strong Dissatisfaction over U.S.' Section 301 Investigation*, Xinhua General Overseas News Agency, Oct. 11, 1991, available in LEXIS, World Library, Xinhua File.

46. *Administration Initiates Investigation of China's Market Access Trade Barriers*, 8 Int'l Trade Rep. (BNA) 1495 (Oct. 16, 1991).

47. Luo Rongqu warned that the United States should learn from past experience that it has always overestimated its influence on Chinese policy and underestimated China's ability to choose its own policy. Luo Rongqu, *Political Choice in Changing World Climate: A Chinese Perspective toward the Sino-U.S. Relationship*, 150 BEIJING UNIV. J. (Philosophy and Social Sciences Edition) 1, 3-4 (1992) (available in Chinese). Luo also points out that in dealing with China, the United States should make a long-term political choice, rather than a short-term policy choice. *Id.* The viewpoint of a U.S. businessman is also worth noting:

The [Chinese] regime will seek to preserve its prestige and sovereignty in the face of foreign demands. Chinese history amply demonstrates that when Beijing has to choose between maintaining political control and preserving foreign economic interests, it will always choose preservation of the political regime. The 301 and Special 301 negotiations were successful precisely because they were not political; Beijing did not lose "face" in coming to an agreement with the United States because the agreements were cast within the larger economic framework of making China's economy GATT-compatible. . . . [The] Chinese would not want to be seen to "kowtow" (bow) to a foreign power.

Anderson, *supra* note 38, at 14.

48. Tong Zhiguang, Vice Minister of MOFERT, stated that China would continue to align its trade regime with international standards, but not neces-

hand, China has always viewed the United States as an important trading partner and does not want to see bilateral trade relations deteriorate.⁴⁹ The mutual interests of the two countries⁵⁰ prompted the United States to avoid the strong negative reaction of China to the 301 action that would have ensued if the action was justified solely on the policy considerations of U.S. trade law.⁵¹ Ultimately, the success of the 301 action depended on whether or not the United States was fully aware of the potential adverse effect of its action.⁵² The USTR eventually avoided a direct confrontation with China by placing the trade issues under GATT principles.⁵³ This strategy was not in conflict with China's goals, but, instead, was actually consistent with China's overall reform policy.⁵⁴

sarily in the way that the United States expects it to — China would take its own approach. Tong also stated that China's desire to enter GATT and willingness to withstand GATT obligations remain firm even in the midst of market access negotiations, and even if the negotiations do not succeed. *MOFERT Vice Minister Tong Zhiguang Held Press Conference on Sino-U.S. Market Access Negotiations*, 576 XINHUA MONTHLY 160-61 (1992) (available in Chinese).

49. A MOFERT official stated that China has always recognized the mutuality of the Sino-U.S. economies, and that bilateral trade has great potential because of mutual demands. See *MOFERT Spokesman Talks About Sino-U.S. Trade Issues*, *supra* note 35, at 158.

50. The common economic interests between the United States and China center on several different areas. For the United States, China means at least 100,000 jobs, many of which are in high-technology industries, \$6 billion in annual exports to China (1991 figure), consumer gains from low-priced China imports, and future revenue to be generated from China's open market. See Prybyla, *supra* note 17. For China, the United States is its single most important customer (importing about 25 percent of China's exports in 1991), an important supplier of high technology, and a significant supporter of China's standing in and admission to international economic organizations. *Id.*

51. See *MOFERT Vice Minister Tong Zhiguang Held Press Conference on Sino-U.S. Market Access Negotiations*, *supra* note 48, at 160-61.

52. "[W]hile the United States presses China to open its markets, we must also be mindful that our policies will affect important constituencies within China." Sands & Lehr, *supra* note 13, at 11.

53. During the negotiations, China informed the USTR that as a developing country China would not accept any concessions beyond what GATT requires of developing countries. See *MOFERT Vice-Minister Tong Zhiguang Held Press Conference on Sino-U.S. Market Access Negotiations*, *supra* note 48, at 161. China urged the United States to adopt a flexible and practical strategy so that an agreement could be reached. *Id.* The USTR also realized that China's strong desire to accede to GATT made it more willing to open its markets. China's desire to join GATT is heightened because it wants to avoid being shut out of GATT if Taiwan is accepted first. Massey, *supra* note 40, at 11.

54. China needs access to U.S. markets and technology, due to its continuation and expansion of economic reforms. *Id.* at 9, 11. China took the market access action seriously because if the United States carried out its sanctions, China would lose access to U.S. markets and technology. *Id.*

Second, China has taken the position that Section 301 as amended by the 1988 Trade Act has strong protectionist tendencies that are neither in line with the U.S. government's long-term position on free trade nor representative of the spirit of a global economy embodied in the policies of GATT.⁵⁵ China has specifically argued that while the United States threatens other countries with unilateral trade sanctions under Section 301, the United States requires other countries to abide by the rules of GATT.⁵⁶

China did, however, signal its sincere willingness to enter into market access negotiations in furtherance of its continuing reform policy, and expected the same degree of sincerity and pragmatism from the United States.⁵⁷ For example, in response to a proposed retaliation list put forth by the United States, China announced its anti-retaliation proposal, but only with the hope of ultimately reaching an agreement.⁵⁸ Since the USTR focused on resolving the issues under GATT principles in a manner which would further China's involvement in the world economy, the argument that 301 actions are protectionist was not stressed by China during the 301 negotiations.

Third, although China is not presently a member of GATT, China's strong desire to re-enter GATT⁵⁹ has allowed the United

55. Cable from American Embassy, Beijing, to Secretary of State, Washington, D.C., State Department No. FBIS 034 (Aug. 11, 1988). (PRC Government Spokesman Criticizes U.S. Trade Bill). See also Wang Dingyong, *On General Agreement on Tariffs and Trade*, SOCIAL SCIENCES IN CHINA 67, 77 (1993) (available in Chinese). For a discussion of criticism of the 1988 amendments by foreign countries, see Kenneth J. Ashman, Note, *The Omnibus Trade and Competitiveness Act of 1988 - the Section 301 Amendments: Insignificant Changes from Prior Law?* 7 B. U. INT'L L. J. 115 (1989).

56. MOFERT Vice Minister Tong Zhiguang Held Press Conference on Sino-U.S. Market Access Negotiations, *supra* note 48, at 161.

57. *Id.* at 160.

58. The announcement of an anti-retaliation measure was China's official response to the USTR's threatened sanctions on Chinese products. See *supra* note 16 and accompanying text. Mr. Tong Zhiguang, Deputy Minister of MOFERT, stated that "China is not afraid of trade war, especially when threatened with unilateral trade retaliations." MOFERT Vice Minister Tong Zhiguang Held Press Conference on Sino-U.S. Market Access Negotiations, *supra* note 48, at 160-61. "In the event that the U.S. retaliates against China with high tariffs, China will certainly take corresponding measures." *Id.* "That is undoubted, but we do not wish to do so." *Id.* In addition, Tong stated that in response to the USTR's retaliation list, the Chinese authority had proposed an anti-retaliation list, for which public comment was being requested. *Id.*

59. China argues that the CONTRACTING PARTIES should allow China to resume China's original GATT membership rather than admit China as a new member. See Cai, *supra* note 15. This position may complicate U.S. trade policy toward China when China joins GATT due to the conflict between the re-

States to resolve trade disputes with China under GATT principles. The USTR identified four issues that it would investigate pursuant to Section 301: (1) transparency of trade laws, regulations, judicial decisions, and administrative rulings; (2) selected import prohibitions and quantitative restrictions; (3) import licensing requirements; and (4) selected technical standards and testing requirements.⁶⁰ The USTR considered these trade barriers "to be inconsistent with the multilateral rules and trade liberalization principles of"⁶¹ GATT and "to the multilateral codes negotiated under GATT auspices, if [China] were a contracting party to the GATT and its related codes."⁶² This approach eventually led the 301 negotiations in a direction which promoted China's stated goal of joining GATT,⁶³ rather than simply resolving trade issues to the benefit of the United States.

II. THE MOU IN GATT TERMS

The 301 action ended satisfactorily for both the United States and China. The two countries successfully negotiated the MOU on market access, one of the two "landmark trade agreements."⁶⁴ Because of the significant role of GATT principles in the bilateral negotiations, it is worth examining how the MOU provisions incorporated GATT terms in resolving the market access issues.

quirements under the Jackson-Vanik Amendment and U.S. obligations under GATT. See Chang, *supra* note 17. In order to preserve the leverage of annual MFN renewal under the Amendment, the United States may choose to opt out of its GATT obligations to China under Article XXXV. *Id.* However, the United States may not be able to invoke Article XXXV if China's GATT membership is resumed because Article XXXV applies only when a new member becomes a contracting party. *Id.*

60. See Off. of U.S. Trade Rep., *supra* note 27. For a detailed discussion of these four issues and their relationship to relevant GATT provisions, see *infra* notes 66-122 and accompanying text. In addition to investigating these four issues, the USTR would continue to hold consultations with China to address market access barriers that would not necessarily be inconsistent with GATT rules but which nevertheless would pose significant impediments to trade, including China's "prohibitively high" tariffs, some of which range from 120 to 170 percent *ad valorem*. See Off. of U.S. Trade Rep., *supra* note 27.

61. Off. of U.S. Trade Rep., *supra* note 27. "Resolution of these market access issues is important for China in light of its expressed desire to join the GATT. Currently, China's trade regime is incompatible with GATT policies and principles in many respects." OFF. OF U.S. TRADE REP., *supra* note 34 at 44. For details of specific Chinese trade barriers, see *infra* notes 66-125 and accompanying text.

62. Off. of U.S. Trade Rep., *supra* note 27.

63. *Id.*

64. 1993 NTE REPORT, *supra* note 2, at 50. See also *supra* note 6.

The Section 301 action on market access involved four specific trade issues: (1) lack of transparency of the Chinese trade regime; (2) import prohibitions and restrictions; (3) import licensing requirements; and (4) technical and certification barriers.⁶⁵ The use of GATT rules facilitated the ultimate agreement on these issues.

A. ABSENCE OF TRANSPARENCY

Absence of transparency has been a major obstacle to China's foreign trading partners. The lack of transparency in China's trading system lies in the fact that rules and regulations governing the system are not readily accessible and vary by region.⁶⁶ Due to this lack of transparency, "U.S. firms and even Chinese officials themselves lack a solid understanding of how the Chinese trading system works."⁶⁷ In addition to national rules, China also maintains a set of internal (*neibu*) rules that are unavailable to foreigners and may take precedence over any known regulations.⁶⁸

The MOU has committed China to substantially improving the transparency of its trade regime.⁶⁹ Compliance with Article I of the MOU will bring China into conformity with GATT Article X. GATT Article X covers the issue of transparency by requiring each contracting party to promptly publish all of its trade laws and regulations, as well as its bilateral trade agreements, for the benefit of its trading partners.⁷⁰

65. See Off. of U.S. Trade Rep., *supra* note 27; Off. of U.S. Trade Rep., Termination of Section 301 Investigation Regarding Certain Market Access Barriers of the People's Republic of China, 57 Fed. Reg. 47,889 (Oct. 20, 1992).

66. OFF. OF U.S. TRADE REP., *supra* note 34, at 52.

67. *Id.*

68. *Id.* "Virtually every foreigner who has tried to do business in China has had an encounter with a bureaucrat who has explained that what the foreigner is seeking to do, or the approval he or she needs, is prohibited by an internal (*neibu*) regulation the foreigner is not permitted to see." Massey, *supra* note 40, at 9.

69. See MOU, *supra* note 6, art. I.

70. GATT art. X:1 states in relevant part:

Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the

China has agreed first to publish, openly and promptly, all laws, regulations and decrees concerning trade;⁷¹ second, to establish a central repository for the publication of all trade regulations;⁷² third, to enforce only published trade laws, regulations and administrative guidance, and end the use of restrictive internal trade regulations;⁷³ and fourth, to make the import approval process transparent.⁷⁴ Implementation of these measures would bring China into conformity with GATT Article X. The third item appears to be a corrective measure requiring China to internally regulate the transparency of its trade system to bring about uniformity and consistency within the country. This is necessary to bring China into compliance with the prohibition under Article X on the enforcement of any measure affecting existing import duties or other restrictions before such a measure has been published.⁷⁵ In addition, the MOU provides for administrative and judicial procedures for processing customs-related complaints, including appeals to both administrative and judicial authorities.⁷⁶

China's full implementation of the transparency requirements is a fundamental step in its overall trade system reform. Effective implementation will ensure that China's market is more open to the United States.⁷⁷ Realistically, however, due to governmental bureaucracy, the transparency issue will not be fully resolved without difficulty.

government or governmental agency of any other contracting party shall also be published.

71. See MOU, *supra* note 6, art. I, ¶ 1.

72. *Id.* art. 1, ¶ 4 (requiring the designation of an official journal for the publication required under this article).

73. *Id.* art. I, ¶ 4 (requiring the Chinese government to issue regulations providing that only trade laws and regulations published and readily available to foreign governments and traders can be enforced).

74. This commitment overlaps one of the agreements reached on the issue of import licensing which requires China to publish a list of Chinese authorities granting import licenses or other approval, and related procedures. *Id.* art. II, ¶ 1(ii).

75. GATT art. X:2 states:

No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

76. MOU, *supra* note 6, art. I, ¶ 6.

77. Massey, *supra* note 40, at 10.

B. IMPORT LICENSING REQUIREMENTS

China's control of imports is based largely on its import licensing system. By 1991, the system covered approximately 45 percent of China's imports by value, affecting a wide range of products. As many as 572 categories of consumer goods, raw materials, and production equipment were included.⁷⁸ The U.S. government sees the Chinese import licensing system as a significant barrier. First, an importer is often required to obtain the approval of several government agencies before it can import a specific product.⁷⁹ The approval of the ministry that manages the manufacture of the same products in the domestic market is particularly important because the government seeks to avoid potential competition with domestic products.⁸⁰ Second, the centralized licensing approval system often overrides approval by local governments.⁸¹ Third, only Chinese companies can generally apply for import licenses, restricting direct market access by foreign companies.⁸² Fourth, importation of many consumer goods is restricted either because, as mentioned above, the government wants to protect alternative domestic goods, or because the product for which permission is sought is considered incompatible with China's economic policies.⁸³

The United States' major concern regarding China's import licensing system is not its fundamental legitimacy, but rather the wide scope of its coverage, the growing economic value of the imports covered, and the lack of transparency in the system. Under GATT, licensing is one of the import and export formalities which is regulated so as not to result in "indirect protection of domestic products."⁸⁴ The extensive coverage of the Chinese import licensing system makes it incompatible with GATT be-

78. *Id.* See OFF. OF U.S. TRADE REP., *supra* note 20, at 38; OFF. OF U.S. TRADE REP., 1991 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 45 (1991)[hereinafter 1991 NTE REPORT]; OFF. OF U.S. TRADE REP., *supra* note 34, at 45.

79. *Id.*

80. In 1990, for example, the U.S. government perceived a reluctance by Chinese industrial ministries to expand imports which would compete with the domestic products under their management. See 1991 NTE REPORT, *supra* note 78, at 45.

81. See OFF. OF U.S. TRADE REP., *supra* note 34, at 45.

82. *Id.* See also 1993 NTE REPORT, *supra* note 2, at 53.

83. For example, the sharp decline of U.S. cigarette imports to China from \$140 million in 1988 to only \$8.8 million in 1991 worried the U.S. government. The decline occurred because the Chinese government considered cigarettes wasteful and unnecessary consumer goods. See OFF. OF U.S. TRADE REP., *supra* note 34, at 45.

84. GATT art. VIII:1.

cause its purpose is to protect domestic industries. Its GATT-incompatibility has therefore been the key aspect of the U.S. position that the breadth of the system must be significantly reduced.⁸⁵

The MOU brings China's import licensing system into compliance with GATT Article VIII, which deals with, *inter alia*, import formalities such as licensing.⁸⁶ GATT Article VIII calls for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements, including licensing.⁸⁷ The MOU provisions minimize the number of imports for which licenses are required, and limit the licensing rules to those issued by the central government. The MOU, however, allows China to prohibit imports when such prohibitions are covered by the exceptions contained in GATT Articles XX and XXI.⁸⁸

The resolution of the import licensing issue appears to have eased a major concern of the United States.⁸⁹ China agreed to eliminate 75 percent of its import licensing requirements over the following two years; the first set was to be eliminated by December 31, 1993.⁹⁰ The MOU also requires that the remaining import licensing requirements be transparent⁹¹ and uniform,⁹² and that China eliminate other burdensome requirements.⁹³ The USTR has recognized that the elimination of these restrictions will be of direct benefit to U.S. exporters.⁹⁴

85. OFF. OF U.S. TRADE REP., *supra* note 34, at 45-46.

86. GATT art. VIII:1(c) & 4(c).

87. *Id.*

88. See MOU, *supra* note 6, art. II, ¶ 2. Article XX of the GATT allows ten general exceptions to a Contracting Party's GATT obligations. GATT art. XX. Article XXI allows certain measures to be taken if they are necessary for the national security interest of a Contracting Party. GATT art. XXI.

89. After the MOU is fully implemented, only five categories of goods (including rubber products and wool) will be subject to licensing. Massey, *supra* note 40, at 10. These products are of minor interest to the United States. *Id.*

90. For details of China's import licensing reduction plan, see MOU, *supra* note 6, art. II, ¶ 1(i) and ann. See also *infra* note 132 and accompanying text.

91. *Id.* art. II, ¶ 1(ii) (requiring such rules be published within 90 days from the signing of MOU).

92. *Id.* art. II, ¶ 1(iii) (requiring that only import regulations imposed by the central government are enforceable).

93. *Id.* art. II, ¶ 1(iv) (prohibiting conditioning issuance of import licenses upon transfer of technology, meeting investment requirements in China, or whether competing domestic suppliers of such products exist).

94. 1993 NTE REPORT, *supra* note 2, at 53.

C. IMPORT PROHIBITIONS AND QUANTITATIVE RESTRICTIONS

China's import restriction measures have been identified as barriers to U.S. exports.⁹⁵ Due to the centralized control over imports, all major import decisions in China are generally made according to state plan; the planning results in mandatory guidelines set for specific import categories while excluding other import categories not covered by the plan.⁹⁶ Chinese import restrictions were adopted to "prevent the expenditure of foreign exchange on nonpriority items and to protect domestic producers against competitive foreign products."⁹⁷ In the 301 negotiations, the USTR focused more on the economic impact of the restrictions on segments of U.S. industry, such as timber and steel.⁹⁸

The MOU provisions on quantitative restrictions of imports will bring China into compliance with GATT Articles XI, XII, and XIII. Article XI requires the general elimination of quantitative restrictions,⁹⁹ and, pursuant to the MOU, Chinese quotas on a majority of the product categories will be eliminated. Article XII, as an exception to Article XI, allows import restrictions as a safeguard to balance of payments.¹⁰⁰ This provision applies to China because it is still a developing country in need of steady foreign reserves.¹⁰¹ Article XIII calls for the non-discriminatory administration of any quantitative restrictions.¹⁰²

Under the MOU, China agreed to phase out most of its import restrictions within five years following the signing of the

95. See Off. of U.S. Trade Rep., *supra* note 27.

96. For example, import prohibitions covered approximately 80 types of products and materials, mostly consumer goods, in both 1989 and 1990. As a result, computer hardware, television sets, electronic components, VCRs, certain production assembly line products, printed circuit boards, and fiber optic cables were banned in 1989. Further import restrictions were implemented in 1990 to cover building materials, resulting in 66 percent reduction of wood imports and 84 percent reduction of steel imports from the U.S. See OFF. OF U.S. TRADE REP., *supra* note 20, at 39; 1991 NTE REPORT, *supra* note 78, at 45; OFF. OF U.S. TRADE REP., *supra* note 34, at 46.

97. OFF. OF U.S. TRADE REP., *supra* note 34, at 45.

98. 1993 NTE REPORT, *supra* note 2, at 53.

99. GATT art. XI:1.

100. GATT art. XII.

101. GATT Article XII allows import restrictions that are necessary "in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves." GATT art. XII:2(a)(ii).

102. GATT art. XIII:1, 2(c).

MOU.¹⁰³ After full implementation, only thirty one categories will remain subject to import bans, compared to 234 categories that were subject to import bans prior to the signing of the MOU.¹⁰⁴ Categories of import quotas will also be reduced from fifty-two to ten, most of which will not significantly affect U.S. exports to China.¹⁰⁵ The immediate effect of this part of the MOU is: (1) the elimination of approximately 75 percent of all forms of import restrictions by the end of 1994, including telecommunications equipment and instant cameras and films;¹⁰⁶ (2) the significant liberalization of quantitative restrictions on the product categories each year until full elimination is achieved according to schedule;¹⁰⁷ and (3) the elimination of the discriminatory Directive 56 requiring contracts with only three non-U.S. digital equipment suppliers.¹⁰⁸

D. TECHNICAL AND CERTIFICATION REQUIREMENTS

The United States has considered Chinese quality standards on foreign goods as "stringent and excessive" barriers¹⁰⁹ because they are unknown to foreign exporters and not required of domestic goods.¹¹⁰ China generally requires a quality license

103. China will eliminate its import restrictions according to the schedule set forth in the Annex of the MOU. See MOU, *supra* note 6, art. II ¶ 1(i) and ann.

104. *Id.* See also Massey, *supra* note 40, at 10.

105. *Id.* According to Massey, some categories of U.S. autos and auto parts will still face quantitative restraints (QRs). However, the remaining QRs will not affect the auto parts used by U.S.-China auto joint ventures in China. Since this part of the agreement benefits only the United States and China, Massey predicted that Japan and European countries would criticize it. *Id.*

106. *Id.*

107. MOU, *supra* note 6, art. II, ¶ 1(i).

108. China State Council's Directive 56 forbade purchases of certain high technology from U.S. suppliers. According to the USTR, China State Council's Directive 56 required provincial governments to purchase telecommunication equipment from only three non-U.S. suppliers. *Administration Initiates Investigation of China's Market Access Trade Barriers*, 8 Int'l Trade Rep. (BNA) 1495 (Oct. 16, 1991). The MOU requires China to act by March 31, 1993 to ensure that China's procurement of digital switching systems is conducted within international procedures and on a nondiscriminatory basis as to the source of equipment or identity of the buyer. MOU, *supra* note 6, art. II, ¶ 1(v). The USTR sees this provision as a *de facto* rescission of Directive 56. Massey, *supra* note 40, at 10.

109. 1991 NTE REPORT, *supra* note 78, at 46.

110. For a detailed description of the operation and economic effects of China's inspection system, see Ari ben Avraham, *Inspection Turf Wars*, 20 CHINA BUS. REV. 48 (1993). Avraham believes that both foreign and Chinese companies stand to suffer from an intensifying feud within China's inspection bureaucracy, and that it is the Chinese economy that will suffer the most. *Id.*

to be issued on certain goods before their importation into China, which can cause long delay and additional expenses.¹¹¹ Such importation quality control and testing practices are considered protective measures for domestic producers because they delay or discourage entrance of foreign goods, thereby increasing the cost of U.S. imports.¹¹²

The MOU brings China's technical and certification requirements into general conformity with GATT. Under GATT Article VIII, import inspection, sanitation, and certification are considered formalities that shall be minimized and simplified.¹¹³ It also calls for contracting parties to review the operation of their laws and regulations so that they comply with the standards of the article.¹¹⁴ In addition, the 1979 GATT Standards Code¹¹⁵ prohibits any GATT member from utilizing "technical regula-

111. The following import quality control measures have been identified by the USTR:

(1) From 1989 to 1991 China's State Administration of Import and Export Commodity Inspection (SACI) required inspection of a wide variety of import commodities as well as export items. See OFF. OF U.S. TRADE REP., *supra* note 20, at 39; 1991 NTE REPORT, *supra* note 78, at 46; OFF. OF U.S. TRADE REP., *supra* note 34, at 47.

(2) China still applies strict phytosanitary and veterinary import quarantine standards not supported by modern laboratory techniques. For example, it bans all imports of U.S. fresh fruits into China because of the Mediterranean fruit fly infestations in Los Angeles. See 1991 NTE REPORT, *supra* note 78, at 46; OFF. OF U.S. TRADE REP., *supra* note 34, at 47; 1993 NTE REPORT, *supra* note 2, at 54.

(3) Since May 1990, China has required quality import licenses for nine machinery and electronics products (automobiles, motorcycles and engines, refrigerators, refrigerator compressors, air conditioners and compressors, TV sets, and kinescopes). OFF. OF U.S. TRADE REP., *supra* note 34, at 47. In the case of autos, exporters must provide two free samples and \$40,000 for testing, and finance inspection of foreign auto plants by Chinese inspectors. See OFF. OF U.S. TRADE REP., *supra* note 20, at 39; 1991 NTE REPORT, *supra* note 78, at 46; OFF. OF U.S. TRADE REP., *supra* note 34, at 47; 1993 NTE REPORT, *supra* note 2, at 54.

(4) China continues to require costly testing procedures for foreign pesticides, which do not apply to domestic pesticides. See 1993 NTE REPORT, *supra* note 2, at 54.

112. Such prohibitive effect on trade results largely from the wide coverage of China's certification system. One estimate shows that the number of products subject to standards testing certification requirements increased by 30 percent from 1988 to 1992, covering nearly 150 categories of imports. See Massey, *supra* note 40, at 10.

113. GATT art. VIII:1(c), 4(f), 4(g), & 4(h).

114. GATT art. VIII:2.

115. GATT, Agreement on Technical Barriers to Trade, BISD 26th Supp. 11 (1980).

tions or standards" to create "unnecessary obstacles to international trade."¹¹⁶

Compared with the other three issues, the issue of standards and certification requirements between the United States and China has only been resolved to a limited extent.¹¹⁷ China agreed to apply the requirements to both foreign and domestic non-agricultural products,¹¹⁸ and to gradually harmonize phytosanitary and veterinary restrictions.¹¹⁹ China also promised to adopt mutually-agreed-upon principles of sound science to handle the import of U.S. animal genetic materials,¹²⁰ to restrain from applying conservation policies of domestic wood products to the same imports,¹²¹ and to publish any changes or additions to sanitary and phytosanitary testing or certification requirements before implementation.¹²² Thus, implementation of the MOU would bring China's import certification system closer to GATT standards, but further improvement must be made.

III. SIGNIFICANCE OF THE MOU

A. IMPLEMENTATION

The MOU, when fully implemented, will give "unprecedented market access for key U.S. exports to China."¹²³ Therefore, China's progress in implementing the MOU is of immediate importance to the United States. As initial steps in furtherance of the MOU, China has made a public commitment to continuing reform of its trade regime, particularly concerning imports, in order to aid its bid to re-enter GATT.¹²⁴ It further promised a gradual move towards using tariffs as its main economic levers, and to adopt an international standard of calculating its foreign reserves.¹²⁵ In addition, China announced that import substitu-

116. *Id.* art. 7.1.

117. See 1993 NTE REPORT, *supra* note 2, at 54.

118. MOU, *supra* note 6, art. IV. ¶ 2.

119. *Id.* art. IV, ¶ 2 & 3.

120. *Id.* art. IV, ¶ 3.

121. *Id.* art. V, ¶ 4.

122. *Id.* art. IV, ¶ 5.

123. Henrik Hansen, *China Agrees to Increase Market Access for U.S. Exports*, E. ASIAN EXEC. REP. 16 (Oct. 15, 1992) available in LEXIS, ITRADE Library, EASIAN File.

124. In a press conference on January 20, 1993, MOFERT spokesman Zhou Jie announced the reform plan. See *China Launches Trade Reforms to Regain Membership in GATT*, 10 Int'l Trade Rep. (BNA) 135 (Jan. 27, 1993).

125. Some see the move of devaluation of foreign reserves as designed to protect Chinese industry while import barriers are reduced. *Id.* On a broader

tion had been eliminated, and legislation to implement the transparency of trade regulations was being considered. China also proclaimed that several important measures were being implemented, including steps to end export subsidies, phase-out licensing requirements, and lower import taxes.¹²⁶ China also released a list of 210 major capital construction projects expected to require imports worth \$30 billion in this century.¹²⁷ Most importantly, China has fulfilled its obligations for the first phase-out period of the MOU by eliminating quotas and import licenses on 283 products and by lowering tariffs on 234 products.¹²⁸

The United States, however, has remained skeptical about the sufficiency of China's progress toward implementing the MOU.¹²⁹ Shortly after the MOU was signed, "cautious celebration" was called for, because the potential positive impact of the agreement would depend on how seriously China implements its

level, China announced in December 1992 that it would institute market reforms to build a "socialist market economic system." *U.S. Wheat Exports to China Fell by 1 Million Tons in 1992, USDA Says*, 10 Int'l Trade Rep. (BNA) 1357 (Aug. 18, 1993). "Premier Li Peng said China would be willing to transform the functions of government, change the way enterprises operate, promote the development of markets, implement price reforms, improve the information system to report market conditions and to forecast supply and demand conditions, and establish a legal system to support the market system." *Id.*

126. *China Moving to End Export Subsidies, Lower Import Taxes, Chinese Official Says*, 10 Int'l Trade Rep. (BNA) 949 (June 9, 1993).

127. The announcement was made just ahead of the USTR's visit to inspect China's progress towards improving market access. *China Issues List of Construction Projects Expected to Require \$30 Billion in Imports*, 10 Int'l Trade Rep. (BNA) 1018 (June 23, 1993).

128. PEOPLE'S DAILY, Jan. 1, 1994 at 2 (available in Chinese).

129. Despite China's promises pursuant to the market access MOU, the USTR was still "watching it very closely" and was concerned about trade problems with China, expecting possible non-implementing or backsliding. *U.S. 'Concerned' over China's Compliance with 301 Pact, Official Says*, 10 Int'l Trade Rep. (BNA) 476 (Mar. 17, 1993). This concern resulted in a three-day bilateral meeting (April 21-23, 1993) on implementing the MOU, where the United States expressed its dissatisfaction with China's progress toward the transparency of its trade regulations. *U.S., China Conclude Round of Talks on Implementation of Market Access Pact*, 10 Int'l Trade Rep. (BNA) 711 (Apr. 28, 1993).

In a recent statement, Deputy U.S. Trade Representative Charlene Barshefsky said that the United States had "a number of substantial concerns" over the implementation of the market access MOU considering that the United States is the market for almost one-third of Chinese exports and will soon have a \$23 billion trade deficit with China. *U.S. Gives China Until End of Year to Prove Adherence to Market Access Pact*, 10 Int'l Trade Rep. (BNA) 1795 (Oct. 27, 1993). Barshefsky further stated that for the bilateral relationship to be a substantial one, China must open its markets. *Id.*

terms.¹³⁰ Due to the transitional nature of the MOU terms, implementation will not be completed until 1995; in the interim, the increasing trade imbalance may still worry the U.S. government.¹³¹ On the other hand, China's efforts to implement the MOU have been positive, consistent with its ultimate goal of reentering GATT.¹³² Further improvements, however, must be made in the near future in order for China to convince the United States that substantial progress has been made.¹³³

B. THE MOU AS A MODEL FOR A CHINA-GATT RELATIONSHIP

If fully implemented, the MOU will likely facilitate China's entry into GATT. Full implementation of the MOU, however, does not mean that all future trade issues can be resolved efficiently once China joins the GATT but before it fully converts to a market economy. The United States will likely continue to bring 301 actions against China as it currently does against other GATT members.¹³⁴ However, China's willingness to ac-

130. Massey, *supra* note 40, at 9.

131. First, some were concerned about the implementing process of the MOU:

China's fulfillment of the market access MOU has been more problematic. The agreement is now only eight month old, but even so, some disturbing signs are emerging. China's powerful planning establishment, still alive and well despite the regime's commitment to build a 'socialist market economy,' shows signs of resisting fulfillment of commitments made under the memorandum.

Sands & Lehr, *supra* note 13, at 12. In addition, a CIA report released on July 30 predicted a 30% growth of the trade deficit with China in 1993, to between \$23 and 24 billion. Further increases are likely over the next few years. The report urged U.S. lawmakers to threaten U.S. retaliation. *U.S. Trade Deficit with China Could Jump by Nearly One-Third This Year, CIA Says*, 10 Int'l Trade Rep. (BNA) 1276 (Aug. 4, 1993).

132. President Clinton and China's president Jiang Zemin met on November 19, 1993, at the Asian-Pacific Economic Cooperation meeting in Seattle, emphasizing among other things, the market access issues. As of the December 31, 1993, deadline for the first major phasing-out period of China's trade barriers identified in the MOU, China has abolished quotas and import licenses on 283 products and reduced tariffs for 234 products. *China Lifts Some Import Barriers, But Strengthens Limits on Other Imports*, 11 Int'l Trade Rep. (BNA) 4 (Jan. 5, 1994).

133. Because of concern that the MOU is "not being adhered to" by China, the USTR has not eliminated the possibility of another Section 301 investigation in case of non-compliance with the current MOU. *U.S. Gives China Until End of Year to Prove Adherence to Market Access Pact*, 10 Int'l Trade Rep. (BNA) 1795 (Oct. 27, 1993).

134. A report of the House Ways and Means Committee took the position that "it is essential for the United States to be able to act unilaterally in any situation where it is unable to obtain redress through the GATT against practices which discriminate against or unreasonably impair U.S. export opportuni-

cept unilateral trade actions from the United States will diminish once it becomes a full GATT member.¹³⁵

In theory, the support promised by the United States for China's reentry into GATT should pave a path for the CONTRACTING PARTIES to work constructively with China on the terms of its accession to GATT. The MOU is capable of serving as a "working draft" of the GATT protocol for China's membership. China's dual status as a developing country and a non-market economy will continue to cause uncertainties and difficulties beyond commercial expectations. Therefore, a dispute settlement mechanism modeled after the China 301 approach can serve as a secondary track, supplementing the primary dispute settlement track that operates among GATT members.¹³⁶

ties." TRADE REFORM ACT OF 1973, REPORT OF COMM. ON WAYS AND MEANS; H.R. REP. No. 571, 93rd Cong., 1st Sess. at 67 (1973). Moreover, the standards for commencing a dispute-settlement procedure are interchangeable between Section 301 and GATT because when enacting the original Section 301, the definitions of "unjustifiable" and "unreasonable" as the statutory standards were closely parallel to "nullification and impairment" standards under GATT. Robert E. Hudec, *Retaliation Against "Unreasonable" Foreign Trade Practices: The New Section 301 and GATT Nullification and Impairment*, 59 MINN. L. REV. 461, 515-522 (1975). In the case of Japan, the 301 mechanism outside GATT effectuated several bilateral trade agreements which supposedly solved disputed issues. For details of Japan 301 actions, see Grier, *supra* note 8. During 1989-1991, several trade agreements between the United States and Japan were negotiated under a variety of 301 actions, including three "Super 301" agreements and three "Telecommunication 301" agreements. *Id.*

135. The underlying momentum behind the successful conclusion of the 301 action will vanish after China joins the GATT simply because the concern over losing U.S. support for its GATT bid will no longer be present. China expects that its GATT member status will divert or ward off threats of unilateral trade actions by resorting to GATT for "convenient and equitable" resolution of trade disputes. See Wang, *supra* note 55, at 79. Moreover, GATT's multilateral forum will provide China with a better framework in which to defend against protectionism and discrimination from any developed country. HAROLD K. JACOBSON AND MICHEL OKSENBERG, *CHINA'S PARTICIPATION IN THE IMF, THE WORLD BANK, AND GATT* 92 (1990). Finally, GATT will provide China with unconditional MFN status with all contracting parties so that China will be able to deal with the United States without facing the uncertainty of an annual MFN renewal battle within the U.S. government. China has argued that after it enters GATT, the United States, under GATT Article I, should automatically grant the MFN status to China and abandon the current practice of annual presidential renewal. *China and U.S. Remain Far Apart in China's GATT Re-entry Talks*, 10 Int'l Trade Rep. (BNA) 363 (Mar. 3, 1993).

136. For further discussion of this two-track system, see JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* 291 (1989). The recent negotiations on China's membership indicated that GATT would have to create a constructive protocol which safeguards the GATT members while giving realistic flexibility for China to further its reform. *Id.* The Chinese position is that such a safeguard mechanism as re-

This will ease tension between China and other GATT members through constructive and flexible consultations and negotiations.

In practice, for a two-track system to work properly, the protocol must provide for a dispute settlement mechanism on equal terms, so that it will benefit not only the United States and other developed countries, but China as well. Under the secondary track, GATT members should be allowed to address grievances directly with China and to impose trade sanctions when necessary. However, China must be provided with the means to respond to the possible impairments that it will face. Thus, it is absolutely essential that the secondary track provide for bilateral consultations and negotiations on equal terms before any retaliatory action can be taken.¹³⁷ The 301 negotiations which led to the market access MOU can provide a working model for a China-GATT dispute settlement procedure.

CONCLUSION

The application of Section 301 to China has proven to be effective. The USTR achieved a positive result by accommodating China's willingness to be bound under GATT principles while addressing U.S. trade concerns with China. The two countries reached the market access MOU based on pragmatic considerations, thereby avoiding further conflict in principle.

Because of the underlying momentum of GATT behind the 301 process, the provisions of the MOU demonstrate the significance of GATT terms in facilitating both short-term and long-term interests of the United States and China. To the satisfaction of both countries, the resolution of the market access issues was compatible with relevant GATT principles. Depending on

quested by the United States and the European Community would allow those countries to protect their markets with unilateral quotas and tariffs against Chinese export surges until China completes its transformation to a market economy. See *Talks on China's GATT Membership End; Questions Raised on Currency Proposal*, 10 Int'l Trade Rep. (BNA) 490 (Mar. 24, 1993). Thus, it is necessary for this two-track system to provide special safeguards against possible surges of imports of Chinese products until China fully converts to a market economy.

137. China has expressed concern that the safeguard mechanism being contemplated by the GATT working party may work unequally because it would allow the United States and EC to protect their markets with unilateral quotas and tariffs against Chinese export surges until China completes its transformation to a market economy. *Talks on China's GATT Membership End; Questions Raised on Currency Proposal*, *supra* note 136, at 490.

the quality of the implementation, the MOU may become a prelude to China's GATT membership.

The significance of the MOU extends further to the future China-GATT relationship. Since the full implementation of the MOU will not resolve all of the issues in China's trade regime, the MOU should serve as a model for a constructive GATT protocol on China's accession. This protocol should contain a 301-like dispute settlement mechanism which can serve as a secondary track to the primary GATT dispute settlement procedure so that issues arising from China's current non-market and developing economy can be resolved efficiently. This two-track system must operate on equal terms so that it benefits both China and the other GATT members.

APPENDIX — CHRONOLOGY OF EVENTS

JULY 19, 1991 — PRESIDENT BUSH'S LETTER TO SENATOR BAUCUS

Addressing the concerns over the U.S. - China trade imbalance, President Bush, in his letter to Sen. Max Baucus (D-MT), promised 301 action if the negotiations "fail to yield substantial commitments from the Chinese authorities to dismantle market access barriers." The President's Letter, 70 CONG. DIG. 228-229, no. 10 (Oct. 1991). *See also* Senate Approves Conditional Extension of MFN Status for China Until Next Year, 8 Int'l Trade Rep. (BNA) 1102 (Jul. 24, 1991).

AUGUST 14, 1991 — USTR'S PROPOSAL AND THREAT OF 301 ACTION

Pursuant to the spirit of the Bush letter, the USTR's office stated on August 14, 1991 that in the "bilateral trade talks to be held with China [that] week, the United States [would] seek specific market access commitments and possibly timetables for improvements in the key areas of transparency, import licensing requirements, and use of import substitution policies." *See U.S. to Seek Specific Market Access Commitment on Trade Talks With China*, 8 Int'l Trade Rep. (BNA) 1236 (Aug. 21, 1991). These were the first three issues that the United States identified. An unidentified trade official recognized that the issue of transparency in China's trade rules and regulations was fundamental because of "China's Kafkaesque bureaucracy and long lists of unpublished internal regulations". *Id.* The United States would also seek to remove or reduce China's import licensing require-

ments which covered 45 percent of imports by value, as well as China's import substitute policy, which tightly restricts or bans imports if an acceptable domestic substitute is available. *Id.* The United States also stated that failure to produce substantial progress on market access would result in self-initiated action by the USTR against China under Section 301 of the 1974 Trade Act. *Id.*

AUGUST 20, 1991 — PRELIMINARY TALKS STARTED

The bilateral talks from August 20 - 23, 1991, yielded only vague commitments from the Chinese. In response, the United States indicated that China would have until September 30, 1991 either to respond to the United States proposal or to come up with its counter-proposal, and threatened China with formal 301 investigation in the event that it did not provide an authorized reply. Talks were conducted in Washington with the Chinese delegation led by Tong Zhiguang, Vice Minister of the Ministry of Foreign Economic Relations and Trade (MOFERT). *See U.S. Threatens 301 Action Against China After Talks Fail to Produce Commitments*, 8 Int'l Trade Rep. (BNA) 1284 (Aug. 28, 1991). The USTR indicated that after September 30, 1991 it would initiate "an investigation of China's alleged unfair trade practices if China [did] not formally respond to a United States proposal for specific steps and timetables [for removing] market access barriers." *Id.* The United States "asked China to give a formal, authorized reply by Sept. 30 [1991] to a four-page U.S. proposal for specific steps and timetables that China could take to open up [its] market to foreigners, including increased transparency, import substitution, and import licensing. *Id.* Additionally, in the event that China could not take the proposed steps, the United States wanted to see any counter proposals that China had. *Id.*

SEPTEMBER 30, 1991 — CHINA'S RESPONSE TO THE U.S. PROPOSAL

The Chinese proposal offered to reduce tariffs on a number of product categories without providing details as to the depth of the cuts or specifying which products would be included. *See Administration Initiates Investigation of China's Market Access Trade Barriers*, 8 Int'l Trade Rep. (BNA) 1495 (Oct. 16, 1991). China also indicated that it would consider eliminating the import regulatory tax within six months. *Id.* With respect to import licensing, China promised to announce the elimination of a

"batch" of product categories requiring approval for import licensing and would strive over the next three years to reduce by two-thirds the number of categories that required licenses. *Id.* It also promised to gradually reduce the range of products subject to an import ban, without specifically addressing the U.S. request for removal of a State Council's policy requiring provincial governments to purchase digital telecommunications switching equipment from only three non-U.S. suppliers. *Id.* Finally, China acknowledged its maintenance of internal, unpublished trade regulations, and offered to compile and publish trade documents and regulations in six months, and within a year, compile laws, provisions, and regulations promulgated since 1979. *Id.*

OCTOBER 10, 1991 — USTR'S INITIATION OF 301 ACTION

Unsatisfied with the last-minute Chinese proposal, the USTR initiated a formal Section 301 investigation, focusing on the barriers to major U.S. exports to China. *See* Off. of U.S. Trade Rep., Initiation of Section 302 Investigation and Request for Public Comment: Barriers to Access to the Market of the People's Republic of China, 56 Fed. Reg. 51,943 (1991). The USTR specifically regarded these barriers as inconsistent with GATT's multilateral trade rules and trade liberalization principles, all of which would apply if China was to become a member. *Id.* The USTR also requested consultation with the Chinese government concerning the issues under investigation. *Id.* Section 303(a) of the 1974 Trade Act authorizes consultation with a foreign government upon initiation of a 301 investigation. *See* 19 U.S.C. § 2413(a) (1988).

The USTR launched a Section 301 action against China as authorized by 19 U.S.C. § 2411(b) (1988). The purpose of the investigation was to determine whether or not specific market access barriers in China were unreasonable or discriminatory and whether they burdened or restricted U.S. commerce. Although these matters did not trigger mandatory actions, the USTR considered them unfair and inequitable and, thus, as actionable under the USTR's discretionary authority. Off. of U.S. Trade Rep., Initiation of Section 302 Investigation and Request for Public Comment: Barriers to Access to the Market of the People's Republic of China, 56 Fed. Reg. 51,943 (Oct. 16, 1991).

FEBRUARY 25, 1992 — ROUNDS OF NEGOTIATIONS STARTED

The negotiations focused on the four major types of barriers identified in the section 301 action. In the interim, the USTR requested public comment on the issues being investigated. See Off. of U.S. Trade Rep., Request for Public Comment: People's Republic of China: Market Access Barriers, 57 Fed. Reg. 10,520 (1992). Additionally, the USTR stated on April 2, 1992, that there was little progress in the last three days of negotiations between the United States and China in Washington, D.C. See *Little Progress Made in U.S.-China Market Access Talks, Massey Says*, 9 Int'l Trade Rep. (BNA) 635 (Apr. 8, 1992).

MAY 22, 1992 — "BUILDING BLOCKS" FOR A TRADE AGREEMENT SECURED

By the end of the eighth round of negotiations on May 22, 1992, which was in many respects the most constructive and productive, Joseph Massey, Assistant U.S. Trade Representative, was content that "building blocks" for an agreement on market access had been secured. *'Building Blocks' Secured in Talks with China on Market Access, Massey Says*, 9 Int'l Trade Rep. (BNA) 928 (May 27, 1992). However, according to Massey, substantial differences remained. *Id.*

JULY 8, 1992 — USTR'S DEMAND FOR RESOLUTION BY MID-AUGUST

Carla Hills, then U.S. Trade Representative, gave China a list of issues that would have to be resolved by the end of a mid-August meeting, or the United States would "publish a list of products that could be eligible for sanctions." See *USTR Hills Gives China August Deadline, Is Prepared to Publish Retaliatory List*, 9 Int'l Trade Rep. (BNA) 1294 (July 22, 1992).

AUGUST 27, 1992 — USTR'S PUBLICATION OF RETALIATION LIST

The United States and China failed to resolve the issues by the appointed mid-August deadline. Thus, the USTR published a proposed list of nearly \$4 billion worth of Chinese goods that would be subject to punitive duties after the ultimate October 10, 1992 deadline. See Office of U.S. Trade Rep., Proposed Determinations Regarding Certain Market Access Barriers of the People's Republic of China: Request for Public Comment and Public Hearing, 57 Fed. Reg. 38,912 and ann. (1992).

OCTOBER 10, 1992 — SIGNING OF THE MOU AND TERMINATION
OF 301 ACTION

After the mid-September working level negotiations and the ninth and final round of negotiations with high-level Chinese government officials, the United States and China reached a Memorandum of Understanding (MOU). The MOU, signed on the deadline date of October 10, 1992, was a broad ranging trade agreement which would increase U.S. access to the Chinese market. The signing of the MOU averted the threatened sanctions. *See People's Republic of China-United States: Memorandum of Understanding Concerning Market Access*, Oct. 10, 1992, 31 I.L.M. 1274 (1992).

The USTR officially terminated its 301 action on issues of market access, ending the investigation on October 10, 1992. *See Office of U.S. Trade Rep, Termination of Section 301 Investigation Regarding Certain Market Access Barriers of the People's Republic of China*, 57 Fed. Reg. 47,889 (1992).