The Principle of Transparency of WTO & China’s Foreign Trade Law

Prof. Gan Ying

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Article X of GATT 1994

Article X requires:

• Prompt publication of all relevant laws and regulations
• Unenforceable prior to publication
• Independent Mechanism for review or correction of administrative actions.

(administrative / judicial / arbitral )
Transparency Requirements in Other WTO Agreements

- Agriculture Agreement—arts. 5, 12
- SPS Agreement—arts. 2, 3, 5, 7, 10, 15.
- Antidumping Agreement – arts. 16, 18;
- TRIMs Agreement – art. 6
- Import Licensing Agreement – arts. 1, 8.
- SCMA – art.25
- Safeguard Measures Agreement – art. 11, 12.
- GATS – art. 3
- TRIPS Agreement – art.63.

- WTO structure
China’s Commitments

• **The Protocol on the Accession of PRC**

  protocol art.2

• Working Party Report:
  “maximum extent possible”, make legislation available before it is implemented or enforced, but in no case later than 90 days after it is implemented or enforced.
Chinese Legal System

National Level:
- PNC—Constitution
- Standing Committee—Laws
- State Council & its ministries/commissions—Regulations/ directives/orders

Sub-national Level:
- Provincial & municipal congresses and their standing committees—Local Rules/ regulations
- Local Governments --
Important Legal Changes after Accession

• **Accession Date:** 11 December 2001.

• **Some statistics of the Legal Change:**

• **National level:** over 3750 laws and regulations have been enacted or amended for the consistency with WTO.

• **Sub-national level:** 31 provinces and autonomous regions and 49 major cities repealed nearly 500 trade-related measures/rules and amended almost 200 more.
Examples in selected regimes

-- Foreign Trade Regime

• Uniform Administration of Trade System---MOFCOM

• MOFCOM IS responsible for Policy coordination and implementation for all trade-related issues, \textit{inter alia}:
  • formulating laws, regulations, and policies related to domestic and international trade and foreign investment;
  • harmonizing domestic legislation on trade and economic affairs and bringing China's economic and trade laws into conformity with multilateral and bilateral agreements;
  • countering monopoly activities and ensuring orderly market development;
  • developing and administering import and export regulations, including the allocation of import and export quotas and licences;
  • and other WTO related affairs.

• \textbf{Main trade-related departments or agencies}
Examples in selected regimes

- **Table All.2 of TPR of China 2006**

- China’s Foreign Trade Law 2004
Examples in selected regimes

--Foreign Direct Investment Regime

- The Law of PRC on Chinese-Foreign Equity Joint Ventures (amended 2001)
- Law of PRC on Chinese-Foreign Contractual Joint Ventures
- Regulations for the Implementation of the Law of PRC on Chinese-Foreign Contractual Joint Ventures
- Law of PRC on Foreign-Capital Enterprises
- Regulations for the Implementation of the Law of PRC on Foreign-Capital Enterprises
Examples in selected regimes
-- Intellectual Property Regime

• Significant amendments on major legislations:
• The Patent law
• The Copyright Law
• The Trademark Law
Examples in selected regimes
-- Intellectual Property Regime

the administrative authorities:

1. The Patent Office of the State IP Office under the State Council—patent approval
2. The National Copyright Administration—copyright policy making
3. The Trade Mark Office under the State Administration for Industry and Commerce (SAIC) – trademark registration, anti-unfair-competition, protection of trade secrets.
4. The State Drug Adm—protection of pharmaceuticals
5. The General administration of Customs—enforce IP owners’ rights against infringing goods
7. The SAIC and the State General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) – combating counterfeiting.

* http://www.ipmenu.com/country/china.htm
Has China Complied with the Transparency Requirement?

- USTR Report on China’s WTO Compliance
Enquiry Points and enquiry websites:

- MOFCOM’s Department of WTO Affairs.

- China’s WTO Enquiry Point:
  - e.g. Enquiry point of SPS/TBT: www.tbt-sps.gov.cn
  - China WTO/TBT NATIONAL NOTIFICATION & ENQUIRY CENTER

- promoting the use of the Internet to enhance transparency.

By the end of 2004, more than 16,000 official websites had been launched of ministries, commissions, and other departments under the State Council as well as of local governments.
Publication and Translation

- *the China Foreign Trade and Economic Cooperation Gazette.*

- English translations of laws are compiled and published by the Legislative Affairs Commission of the Standing Committee of the NPC, while trade-related laws and regulations are compiled and published by the Legislative Affairs Office of the State Council.
- Extremely heavy load.
Public Comment

• “Public Comment”?
• Operation of Federal Register?

• "Administrative Permission Law", effective 1 July 2004.
• the Legislation Law, effective 1 July 2000,
• Some Regulations by State Council:

1. the regulations on the Procedures for Formulating administrative Regulations (effective 2002)

2. the Regulations on the Procedures for Formulating Rules (effective 2002)

3. Provisional Regulations on Administrative Transparency (issued in November 2003)
Notifications to WTO:

- Table All.3 of TPR of China 2006.
Chinese Foreign Trade Law 2004
1, Rapid economic growth

• 1) Rapid growth since the Economic Reform:
   GDP growth rate: average 8%, 9.6% for 2008 (WB)

• 2) Foreign trade (FT): most important contributor.

• 3) Rapid development of special economic zone/area
XIAMEN

鼓浪屿
ZHUHAI
HAINAN
3, The regulatory framework of FT legal system:

- 1) Domestic laws and regulations

- A) National level & Sub-national Level:

- B) FOREIGN TRADE LAW 2004 and its administrative regulations

- FTL 2004
  - codified fundamental principles and policies and established an administrative framework, with details to be gradually worked out.
  - --FTL 1994 (invalidated)

- **FTL 2004 compared with FTL 1994:**
  - Enlarges the scope of FT operators
  - Adds three chapters: IP protection/ Trade Investigation/ Trade Remedies
3, The regulatory framework of FT legal system:

- 2) International agreements
  - A) Bilateral:
  - B) Multilateral:
3, The regulatory framework of FT legal system:

• 3) Int’l customs and usages

• In practice
  • Ct. and arbitration tribunals in China often refer to int’l treaties and customs in deciding FT disputes.
II FTL 2004

• 1, Scope of Application

• 1) Applies to:
  • A) Imports & exports (I & E) of goods
  • B) Imports & exports of technologies and protection of trade-related IPR.
  • C) Int’l service-related trade

• 2) Not apply to border trade nor separate tariff areas
II FTL 2004

- 2, Basic principles for FT:
  
  1) FT to be conducted through a unified system:
  
  2) A fair and free trade order to be upheld:
     A) Not defined but Certain unfair and illegal acts are clarified (art.32-36)
     B) Prohibition of unfair competition is further regulated
  
  3) Principle of equality and mutual benefit
II  FTL 2004

3. General rules for regulating FT operators

1) Controlled participation (approval system) in FTL 1994
   Only authorized legal entities and other organizations are allowed to engage in FT business.

2) Registration system in FTL 2004
   A) Natural persons
   B) Right to trade in goods and tech.
      2006, MOFCOM: FTO registration regulation.
   C) Right to trade in service
      May still use the approval system.
      2004, MOFCOM, measures on foreign labor cooperation operation qualifications
II  FTL 2004

- 4, Controlling the conduct of I&E
- 5, Maintaining a FT order
- 6, Promoting FT
- 7, Punishing violations
- —criminal and/or administrative sanctions
III  Tariff control

• Governed by Customs Law, the I&E Tariff Regulations; the Customs I&E Tariff Schedule;

• Administered by the General Administration of Customs and the Customs Tariff Commission, which are directly under the State Council.
III  Tariff control

1. The Customs is vested with the powers:
   - Check means of transport, goods and articles,
   - Verify the papers and administration of inbound and outbound personnel;
   - Examine contracts, invoices, etc.
   - Combat against smuggling.
   - ...

2. Customs duty rate:
   - Ordinary rate
   - Preferential rate

3. Customs duty reduction or exemption:
IV  Non-tariff control

• 1, Licensing and quotas
   Free I&E of goods and tech., except those that are either restricted or prohibited by laws or administrative regulations.

• 2) Conditions of restricting or prohibiting the I&E:

   • A) Art. 16 & 17 of FTL 2004
   • B) Similar for trade in service

• 3) transparency

   • A) Items List published by FT authorities.
   • B) Rules on distribution of quotas made by State Council.
IV Non-tariff control

- 2. Inspection and quarantine

- Administered by State Administration of Commodity Inspection (SACI).

- A) Inspection:

- Regulated by Law on Inspection of I&E Commodities and a complex body of rules and measures.

- B) Quarantine:

- Regulated by—
  - Law on the Entry and Exit of Animal and Plant Quarantine and its implementation rules,
  - Border Health and Quarantine Law
  - A body of rules and measures regulating various aspects of health and hygiene inspection
V Trade remedies

- 1, Anti-dumping
- 2, Anti-subsidy
- 3, Safeguard measures
China-US Trade Frictions

- Strategic Economic Dialogue
- CCTV CHANNEL 9: Assistant Spokesperson - 2007年12月14日