

Alan S. Alexandroff

Whether China gets "permanent normal trading relations" from the US looks like being a close run thing. On the other hand, its admission to the WTO finally seems all but certain. The agreements that will make this possible, including the China-US bilateral negotiated last fall, provide for quite sweeping reforms of China's economy and legal system. It is not yet clear, however, whether the Chinese government will be willing or able to deliver on what it has promised to do. How it proceeds will have important repercussions for China, for the WTO and for the world economy.

Tout indique que la Chine obtiendra des États-Unis la normalisation de ses échanges avec ce pays. Ce qui semble par ailleurs fort douteux, c'est l'admission de la Chine au sein de l'OMC. Les accords qui rendront la chose possible, dont l'entente bilatérale négociée l'automne dernier entre les deux pays, prévoient de vastes réformes à apporter à l'économie de la Chine et à son système juridique. Reste à savoir si le gouvernement chinois voudra et pourra tenir promesse. Les décisions qu'il prendra à cet égard entraîneront d'importantes conséquences pour la Chine, pour l'OMC et pour l'économie mondiale.

Just prior to the now infamous Seattle Ministerial meeting of the World Trade Organization (WTO), and after more than a dozen years of negotiation, the United States and the People's Republic of China announced their bilateral trade agreement — styled the *Agreement on Market Access between the People's Republic of China and the United States of America*, dated November 15, 1999. Enormous in scope — it covers more than 200 pages of tariff schedules and market-opening commitments by China — the bilateral agreement set the terms of economic engagement between these two formidable economies. Through the "magic" of most-favored-nation (MFN) treatment, most of the agreement's terms will also become available to all the member countries of the WTO following China's admission to that Organization. Seemingly a great success, the *Agreement* encompasses a variety of commitments to broad and deep liberalization by China. Its successful completion seems to resolve the question of China's economic integration into the global economy.

Yet the loud political battle in Congress over the question of "permanent normal trading relations" (PNTR) for China suggests doubts over the US's acceptance of China as an economic partner. Moreover, actions by some of China's key economic ministries to sustain state control raise doubts over China's commitment, or at least its capacity, to achieve economic liberalization. And the questions raised by a num-

ber of analysts, including Claude Barfield of the American Enterprise Institute and Mark Groombridge of the Cato Institute in a recent book which argues that China's entry into the WTO may harm the organization, suggest that the consequences of China's entry for the global economy are still a live issue. Just what is the "trouble with China?"

The legislative text that grants China PNTR is actually quite short. It declares simply that Title IV of the *Trade Act of 1974* (known generally as the "Jackson-Vanik amendment") no longer applies to the People's Republic of China. Following the Carter Administration's bilateral trade agreement with China in the late 1970s, the amendment's political impact was to require an annual congressional debate about China. While Title IV technically concerned the certification of unhindered emigration from communist countries, the annual debate on whether or not to sustain China's most-favored-nation status has often been wide-ranging, having long since outgrown trade. Particularly after Tiananmen, the congressional examination has included castigations of: China's human rights record, its lack of religious tolerance, its inadequate environmental and labor policies, its Taiwan policy, its alleged espionage in the United States and, oh yes, even its trade, including its alleged chronic dumping of goods in the United States.

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The pending vote on PNTR presumably will eliminate this annual congressional harangue over the harm, real and imagined, done to the US by Chinese actions. That finality is part of the problem for the US Congress. Some US politicians have clearly become MFN junkies, addicted to the annual vote. The record suggests that few opinions, or votes, are changed but the debate does provide an opportunity to raise questions that resonate with voters and special interests, with minimal impact on substance. For old times' sake, if nothing else, some proposals recently floated by various senators and congressmen would establish continuing surveillance of China on human rights or other matters and allow Congress to continue its annual debate in a new guise.

PNTR represents a key remaining step in the multilateral effort begun in the 1980s in Geneva to integrate China into the global trading system and require it to adhere to the general obligations of the *General Agreement on Tariffs and Trade* (GATT), and its successor, the WTO. Notwithstanding the vote's importance, it is only now becoming clear to Congressmen, many of whom evidently enjoy the annual China debate, that the vote is not about whether China becomes a member of the WTO. They are coming to recognize, in part as a result of repeated warnings from administration officials, including Larry Summers, the Treasury Secretary, that the vote determines whether the United States will obtain the benefits of the bilateral China-US agreement (which will shortly be multilateralized in the *Protocol of Accession* — the document leading to China's admission to the WTO). The congressional vote cannot prevent China from joining the WTO. But it could lead to the United States being denied the benefits of access and market-opening that were, ironically, in large part determined by the US-China bilateral negotiations. As President Clinton has argued in his efforts to gain support for PNTR, the *Agreement* is "a one-way deal" in which the US is not required to provide reciprocal trading concessions to China.

The annual MFN vote serves as a marker in determining the likely outcome of the vote. As of mid-April, there are not yet enough votes to pass PNTR in the House of Representatives. The problem is lack of support among Democrats. Michigan Congressman David Bonior, the House Democratic Whip and the point man for opposition to PNTR, has suggested that as many as two-thirds of the 211 House Democrats — 141 members — could eventually vote against PNTR. On

other occasions he has suggested that 30 regular Democratic supporters of MFN plus 98 other identifiable Democrats, for a total of 128, constitute the Democratic opposition to PNTR — enough, he believes, to push the total "nay" vote above the 218 votes he needs.

Is the vote on PNTR therefore destined to become an all-out battle for each and every vote, similar to the battle over NAFTA in 1993? The Democratic opposition certainly thinks so. But the advantage they see is that a lame-duck administration will be unable in the current circumstances to "buy" Democratic votes for PNTR. The administration may not be as "toothless" as Congressman Bonior suggests, however. It is certainly active and focused, which has not been the case in all recent trade votes. It has appointed Secretary of Commerce William Daley as the Administration's "point person" on the PNTR vote. In addition, former Congressman and now Secretary of Agriculture Dan Glickman is playing a major role, as is Charlene Barshefsky, USTR. In the end, however, only the President can close the deal with wavering Democrats. And the President apparently has been making key calls to those Democrats that appear to be "gettable." As for being unable to offer concessions, appropriations bills are set to come forward in the summer, and Mr. Clinton is nothing if not a formidable fundraiser. In a close political race this November, the President's willingness to come into a district for a fundraiser may be a significant attraction for wavering Democrats.

One way in which the PNTR vote is very much like the NAFTA vote is in the engagement of special interests. Following the Seattle WTO Ministerial, John Sweeny of the AFL-CIO made it clear his union was determined to defeat PNTR. While Sweeny and the AFL-CIO have garnered the greater media attention for its opposition to PNTR, contacts on Capitol Hill suggest that it is the industrial unions, particularly the UAW and, more surprisingly, the Teamsters, that are playing hard ball with Democratic congressmen. On the other hand, the ball may not be as hard as in 1993. There is a view in Washington that, notwithstanding the rhetoric of the AFL-CIO and its leader, there is an agenda even bigger than blocking PNTR, and that is securing a Democratic majority in the House of Representatives. In this view, the union has learned the lesson of the NAFTA vote. After NAFTA it targeted Democrats who had voted for the trade deal. Partly as a result, in 1994 the Democrats lost majorities in both

houses. House Democratic leader, Richard Gephardt is playing a rather circumspect role, not unlike his modulated opposition in 1993 to NAFTA, but very much in contrast to his strong vocal opposition to granting the President "fast track" negotiating authority in 1997. Visions of the Speaker's seat may be the foundation of his caution. While it still is unlikely that Gephardt will vote for PNTR, his restraint has to be counted a factor in the battle to secure it.

Business groups have organized to ensure a positive vote for PNTR, though their desire to keep every member of their coalition on board has slowed the capacity to respond quickly to events. And other agendas have not disappeared. Recently, the US Chamber of Commerce targeted a number of sitting Democrats who favor PNTR, while supporting Republicans who are unwilling to vote for PNTR. This clearly has not helped in the effort to secure PNTR.

It is hard to predict the outcome of these contrary and shifting political currents. It does seem likely that, at the end of the day, PNTR will pass. On the other hand, if China takes aggressive action against Taiwan and its newly-elected President, Chen Shui-bian, that would place PNTR in jeopardy and probably also bring the *Taiwan Security Enhancement Act (TSEA)* to the Senate floor. *TSEA*, which the House passed in February, mandates closer military cooperation between the US and Taiwan. The Senate leadership has been lukewarm in bringing the legislation forward or in tying it to China's future exemption from the Jackson-Vanik initiative. But tension in the Strait of Taiwan would likely persuade the leadership to bring it to a vote and would also open the possibility to tying the PNTR vote to human rights or other oversight of China. Even these legislative actions might not be enough to secure PNTR's passage, however.

In fact, President Clinton has urged support for PNTR in Congress on the basis of national security. The President has argued that normal trading relations with China, including China's adoption of the WTO rules of national treatment, MFN and transparency, is essential to the national security of the United States. Normalization will help Chinese reformers lock the government into a rules-based trading system that would substantially alter how China governs itself, thus leading to greater regional stability. The president won a strong supporter recently. General Colin Powell — a frequently mentioned running-mate for Republican presidential candidate George W. Bush — publicly

came out for PNTR, calling it in the "best national interest" of the United States.

I am no expert on China and certainly not on its security interests and objectives. However, even the experts are highly divided on the question of what the current Chinese leadership's long-range economic and political plans are. It is not yet clear whether China has a long-term interest in becoming the leading regional power or even in challenging the United States for superpower status. Is China hegemonic or defensive? Only time and Chinese actions will tell.

What is clear, however, is that Chinese leadership, of whatever stripe, does believe in a single national state and a strong central authority that can exercise control over the entire nation. This is not just Chinese communist rhetoric but is embedded in the national psyche. It makes no difference that Taiwan has only periodically been tied to the mainland. Indeed, Japan probably has as good a claim to the island as China does. Nor does it make any difference to China's leaders that Taiwan has for half a century now cut itself off politically from the mainland, or is today a fully functioning democracy and acts for all practical purposes as a sovereign state. Chinese communist leadership has perpetuated the myth, if not the fact, of one China and its leadership would be unlikely to last if it admitted *de jure*, or even *de facto*, that Taiwan was independent. How China's reform of its economy and administration to meet its obligations to join the WTO and become integrated more completely into the world economy would affect this difficult national cultural issue is very hard to say. While there is a good case to be made that the changes the Chinese have agreed to would lead to broader reforms, they will not happen overnight. Nor will the re-thinking of China's national aspirations, which probably requires that the current communist leadership pass from the scene and that the role of the Party in the life of the nation be entirely re-thought. Only then are we likely to see the impact of economic reform and global integration on China's decision-making and strategic objectives.

Meanwhile, there is strong resistance in many Chinese government ministries and in large segments of the Chinese bureaucracy and administration to the reforms and market access concessions made to reach the edge of WTO membership. Their concern is not surprising. The concessions made in terms of access and

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ownership in critical fields such as financial institutions and telecommunications are little short of breathtaking. If the deal is judged with anything less than total cynicism, the Chinese leadership has made an enormous bet on market forces and the benefits that markets will bring China. While the leadership may well believe that it can maintain political control while simultaneously opening the country to global market forces, restructuring the economy away from state control, and reforming the administration of economic practice, history surely tells them that continued control is far from guaranteed. Thus reforms that have been promised involve the serious possibility of a substantial erosion of the power and even influence that communist leaders are accustomed to.

But there the bilateral agreement is, in black and white. And it will soon include an EU-China bilateral, notwithstanding delays in concluding those negotiations. And then there will be the WTO *Protocol of Accession*, in which China and the member countries will set out China's general obligations. The *Protocol* comes with soon-to-be-finalized schedules of concessions on both goods and services, as well as: a table showing which Chinese laws will require amendment to ensure WTO consistency, various action plans and notifications, revised tables on domestic agricultural support and export subsidies, and a response to the standard questionnaire on state trading. And finally there will be the *Working Party Report*. Out of all this terribly dull trade minutiae a social and political revolution may well be fashioned. And traditional Communist leaders are well aware of the possible impact on the China that so far they have controlled.

So what's the problem with China? If WTO membership requires all this reform, why are some analysts and experts unhappy both with the final deal and with China's possible impact on the WTO (rather than the reverse)? Some argue that China's presence will alter the organization's character. Of course, similar arguments were made when the People's Republic took the permanent China seat in the United Nations and that hasn't been the case. In general, China has taken an understated role in the UN — as it also has in the IMF and the World Bank.

But China is not like any other WTO member. It is an enormous transitional economy, and still largely a non-market economy, despite the fact that, coming out of the Uruguay Round negotiations, the WTO largely assumes that

member countries are market economies. In their recent book, *Tiger by the Tail: China and the World Trade Organization*, Claude Barfield and Mark Groombridge, go right to the heart of this deep conundrum of China's membership in a market-based trade organization. Completed shortly before the US-China bilateral was concluded, their book takes straight aim at the economic arguments surrounding China's accession to the WTO. As the authors — one a trade expert and the other a China expert — correctly argue, on one side of the US debate, so far the dominant side, are people and groups who focus on the market access concessions, that is, the tariff reductions and the required liberalization of the Chinese economy. On the other side are analysts, including themselves, who focus instead on the "transparency" issues — the legal and administrative policies and apparatus that China, "must establish to ensure equitable and efficient resolution of commercial and trade disputes." Much less has been heard from this side in the debate so far, although in a recent editorial in the *Far Eastern Economic Review*, Barfield argued that "The Achilles heel in the evolving accession agreement for China ... is the very limited mandate for transparency in administrative and judicial processes and guarantees that foreign investors and companies will reap the benefits of the rule of law."

Barfield and Groombridge believe that unless China's accession includes administrative reform and an altered anti-dumping and safeguard regime, there will be a long and exhausting struggle, particularly before the WTO trade dispute panels and Appellate Body, to force China to adhere to the general obligations it will assume with accession to the WTO. As they suggest, unless the terms of accession create and implement a rules-based, legally much tighter administrative system, China's trading parties, such as the European Union, the United States, Japan, Canada and others, are likely to create bilateral "managed trade" regimes with China — exactly the sort of thing the GATT/WTO was devised to avoid. As Barfield argues in his *Far Eastern Economic Review* article, "Because of the primitive state of China's legal and administrative systems, thoughtful proponents of Chinese WTO membership are quietly worried that failure to address issues of due process and reform of legal institutions will result in corrosive disputes within China, and ultimately within the WTO."

Although China has committed itself to administrative reform, non-discrimination, judicial review and transparency, its administrative

and industrial structures are at present unable to meet those commitments. Put simply, China is not a market economy and its appreciation of the rule of law is imperfect at best. In addition, and at least for the moment, nothing assures that China will undertake the myriad legal, administrative and structural reforms needed to make good the promises made in its protocol of accession. Barfield and Groombridge are best in their effort to examine the administrative reform required. They see the tension and possible trade-off between a reliance on national anti-dumping and countervailing duty actions, on the one hand, and product-specific safeguards, on the other. They describe the difficulties in the current Chinese legal and administrative system and they urge a "common set of procedures and substantive rules" for China and all transitional economies in their accession to the WTO. This will lead to the WTO evaluating China's performance in meeting deadlines and any progressive new obligations as set out in the Protocol.

They remain US-focused, however, especially in the examination of anti-dumping and countervailing duty regimes for non-market economies. Even though their book was published before the US-China bilateral was finalized, Barfield and Goodridge are distinctly leery of the agreement, as they should be, since it is notoriously protectionist tool for domestic US industry. Indeed, if anything, the US-China bilateral may serve to undermine reform. To make anti-dumping determinations easier, the US got the Chinese to agree to continue to be categorized as a non-market economy for another 15 years. Moreover, the US negotiated further protection in the form of a product-specific safeguard that will last for 12 years. According to this clause, US industry can take advantage of a relatively low threshold test to demand protection for specific sectors — read that as quotas — against any "surge" of Chinese products. These safeguards have the potential to evolve into a close equivalent of managed trade.

Meanwhile, American and other foreign firms operating in China can be expected to bombard that country's unreformed trade and administrative system with wave upon wave of actions in the WTO Dispute Settlement Body (DSB). This explosion of panel cases will certainly annoy the Chinese; it may well also overwhelm an already overworked DSB.

What is the likelihood that some or all of these issues may be addressed in the *Protocol of Accession* and the report of the China Working

Party or, finally, by the General Council of the WTO? If history is any guide, very little. Trade negotiators have a very poor track record in dealing with non-market economies and in providing the incentives, let alone the monitoring and surveillance, that are required to ensure reform and market liberalization. Trade negotiators are mainly concerned with completing the deals and moving on to the next deal and the next protocol.

Member countries have already tackled the accession of several transitional economies. A good example is Poland. The best the trade negotiators could come up with was a requirement that Poland increase its imports by a set annual amount — a barely veiled "managed trade" arrangement with the member countries. In the past, a number of countries, Japan for example, have been accorded provisional membership. But this would not be satisfactory for China at this stage of negotiation.

The current *Protocol of Accession*, last formally changed in March 1997, includes a section 18 on a "transitional review mechanism," which would have a working party convene every two years to review implementation of the *Protocol* and of the WTO rules "within the overall framework of China's progress in the reform of its economic and trade regime." The working party could make recommendations to China or to other WTO members. More recently it appears that there have been informal discussions in Geneva about possibly using the Trade Policy Review Mechanism (TPRM) to monitor China's progress in meeting its accession obligations. But so far there is little evidence that these discussions include a serious attempt to determine the markers that would be needed to show progress in reform and liberalization of administrative practice and judicial procedure. Moreover, there appears to have been little or no consideration of what kinds of sanctions might be imposed if China engaged in serious breaches of its obligations, and only perfunctory examination of how incentives might be structured so as to encourage Chinese reforms.

For some time now a number of analysts — including Groombridge and Barfield, Sylvia Ostry, myself, and finally, and for the longest period, Robert Herzstein, a well known Washington trade lawyer and former trade official in the Carter Administration — have suggested ways in which to avoid the potential flood of dispute settlement actions and have proposed monitoring and surveillance mechanisms to accompany China's entry into the WTO. Such an effort will take the collaboration

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of all international organizations — the WTO, naturally, but also the World Bank and the IMF — and also of independent research firms. Indeed, the WTO will be the minor player since it has very little independent capacity to gather country data. That co-ordination will not be easy and may be resisted by the organizations themselves.

A number of critical areas are obvious targets for monitoring and surveillance, including: the reform of state-owned enterprises (SOEs); the evolution of the macro-economy; and the reform of administration and the judiciary in trade-related areas, in other words the development of the rule of law. In the case of SOEs, the examination could include tracking the reduction in government and bank lending and corresponding increases in private sector lending. In the macro-economy, the committee could examine the amount of non-social public spending as a percentage of GDP. In the rule of law area, tracking could include the number and result of complaints by foreign firms with respect to trade-related matters — as well as a large number of other things.

Quantitative and qualitative data should be gathered in each area, using a number of indicators, and should then form the basis of a report that can be examined by whatever committee is assigned the task in the WTO. If such reports were made every two years or so, material progress could be rewarded with a reduction in safeguard actions against Chinese products. On the other hand, a persistent pattern of failure could lead member countries to withdraw benefits. Though it would be best to require WTO action in such cases, the reality of Geneva politics is that some countries would be unwilling to act or would be pressured not to. Thus as a condition of accession, individual countries would have to be given the right to eliminate benefits, though a “reasonable response” test would govern. Such a “carrot-and-stick” approach would provide the right incentives for the Chinese leadership to encourage continued economic reform.

Not surprisingly, Chinese negotiators have been cool, if not downright hostile to our proposals — notwithstanding that such steps would facilitate China’s integration into the world economy. But current trade negotiators from the chief trading parties have been equally skeptical and in some cases flat-out dismissive. And of course the later these discussions, if any, are put off and delayed, the less likelihood that in the final scramble to complete the *Protocol* for China that anything serious can be included, other than superficial mechanisms of little consequence. The result may be a China that cannot reform and a WTO that cannot ensure the integration of China into the global economy. That’s the trouble with China.

Alan S. Alexandroff is a research director in the Program on Conflict Management and Negotiation at the Centre for International Studies, Munk Centre for International Studies, University of Toronto. He is also a director of Navigant Consulting, Inc.

Loving your HMO (*continued from p. 35*)

benefits are only acting logically, given the way the rules are currently written. The market controls costs, and it pursues quality of care much more effectively than most commentators acknowledge. But the free market will never look after everyone. That is not its incentive structure.

Insuring that everyone is cared for is the natural role of government. Perhaps that means helping people buy into the federal employees’ health care system, as Bill Bradley proposes. Perhaps it means creating new health-coverage tax credits and allowing younger people to buy into Medicare, as Al Gore suggests. Perhaps it means finding some other hybrid between efficient free-enterprise medicine and protection for those who falter in the market. Any solution will cost money, though some of the funds will be recovered through better health and higher productivity among those now uninsured. But the good news is that such money is available, in part because managed care helped save it.

Managed care proves that extensive reform of the medical system, often deemed impossible, can actually happen quickly and with success. Now it’s time to apply that knowledge to America’s one true health care crisis: the lack of universal care.

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God in the Constitution (*continued from p. 60*)

under judgement. We acknowledge that our political, economic, and cultural achievements are always flawed in the light of a perfect standard that we perceive and acknowledge even if we cannot fully actualize it.

There can never be an end to history, if by this one means we have attained a perfect state of affairs in ordering our communal life, as in, for example, a liberal democratic, capitalist society. To affirm God’s supremacy is to abandon, not our striving, but our utopian delusions about our political and economic programs and achievements.

These general principles that are conveyed by the term “God,” are not the full-blown message of salvation that Christians or other religious groups might wish to promulgate. But they are enough to provide a foundation for a peaceful and humane social order and hence they justify the retention of “God” in the Constitution. The only true atheist, it has been said, is the nihilist. The alternative to “God” is therefore a much longer re-write of the Constitution.

Antonio R. Gualtieri is a retired professor of religion at Carleton University and a minister of The United Church of Canada.