

**EU'S MONITORING OF CHINA'S
COMPLIANCE WITH WTO OBLIGATIONS**

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Executive Summary

1. To World Trade Organization (WTO) members, admitting a country with a rapidly expanding economy into the WTO was a great experiment as that country would make significant decisions concerning resource allocation.
2. In the history of the world trading system, never has a country of such trading importance and system incompatibility with WTO norms like China been admitted.
3. Given China's trade weight, its anticipated gigantic trade surge would disrupt the market of its trading partners, and the rule-based multilateral trading system would be endangered if China opted to ignore the WTO rules.
4. To safeguard itself, the European Union (EU), like the United States, imposed upon China a comprehensive protocol which has more far-reaching obligations beyond the WTO.
5. The EU also kept a close watch on China's behaviour in the WTO. With no task forces to monitor China's compliance, the EU has taken full advantage of the built-in mechanisms in the WTO, i.e., Trade Policy Review Mechanism and the Dispute Settlement Mechanism, as well as other measures (including bilateral channels and unilateral measures).
6. This is pursued in the broader context of China's rise and with a broader vision of integrating a rising China into the existing global economic order.
7. After all, a WTO-adhering China is conducive to cementing China's place in the global economy, buttressing the internal reform process, and strengthening the rule of law, which is in the interest of the world.
8. For the EU, the real question is how to encourage China to change its economy into one that relies more on domestic demand than on export on one

hand, and one that allows market access to more imports and protects intellectual property rights on the other hand.

9. Therefore, monitoring shall be conducted to facilitate a smooth and thus healthy China-EU trade relation, which will finally hinge on EU's patience and skills in dealing with a rising China.

EU'S MONITORING OF CHINA'S COMPLIANCE WITH WTO OBLIGATIONS

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Integrating China into the existing global economic order

- 1.1 China's accession to the World Trade Organization (WTO) on 11 December 2001 was a historic event. For WTO members, admitting China into the world trading system was a great experiment. Indeed, China is a huge country, with a rapidly expanding economy where the government plays a significant role in making resource allocation decisions.
- 1.2 It was uncertain at the time of accession whether China's economic system would mesh well with WTO rules and other trading partners' generally market-oriented economies. Moreover, in the history of the world trading system, never has a country of such trading importance and system incompatibility with WTO norms been admitted.
- 1.3 It was anticipated that given China's trade weight, its anticipated gigantic trade surge would disrupt the markets of its trading partners, and the rule-based multilateral trading system would be endangered if China opted to ignore WTO rules. To preempt such moves, the European Union (EU), like the United States, had successfully forced China to accept a comprehensive protocol which commits China to more far-reaching obligations beyond the WTO.
- 1.4 Although the EU did not follow the US in forming task forces to monitor China's compliance with WTO commitments, the EU has taken full advantage of the built-in mechanisms of the WTO, i.e., Trade Policy Review Mechanism

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(TPRM) and the Dispute Settlement Mechanism (DSM), as well as employed other measures (including bilateral channels and unilateral measures) to this end.

- 1.5 It should be pointed out that the EU's monitoring is pursued in the broader context of China's rise and with a broader vision of integrating a rising China into the existing global economic order. After all, a WTO-adhering China is conducive to cementing China's place in the global economy, buttressing the internal reform process, and strengthening the rule of law, which is in the interest of the world.¹

Focus Points of China's WTO Compliance

- 2.1 The inherent tension between international norms and the Chinese context suggests that China's compliance with its WTO rules and commitments remains an unsettling issue.² Like other WTO members, China can be expected to continue to interpret and apply the norms, institutions and processes of the WTO in ways that are influenced by its local culture. Given the binding force of WTO rules, as well as the availability of the regular TPRM, the room for selective application on the part of China is increasingly restricted.
- 2.2 Despite this, there are still complaints about market access, inadequate protection of intellectual property rights, lack of transparency and arbitrariness of Chinese procedures in antidumping investigation against EU exports to China.

¹ Chris Patten Archive, China and Europe: an important partnership, 6 November 2002. available at <http://www.chrispatten.org.uk/speeches/ch061102.htm>.

² Some have even argued that in order for China to conform to WTO rules, the Constitution of the People's Republic of China needs to be revised in that references to the principle of party leadership contained in Article 12 may require amendment. See Pitman Potter, Prospects for China's legal reform project, in Pitman Potter: the Chinese Legal System-Globalization and local culture, London: Routledge Curzon, 2002, p.136.

Market Access

- 2.3 Indeed, the commitments made by China in the context of WTO accession secured improved access of EU firms to China's market. Many import tariffs and other non-tariff barriers were sharply and permanently lifted. While China has made good progress in implementing its WTO commitments, there are still outstanding problems. China has just lost the case on Measures Affecting Imports of Automobile Parts in the WTO, and that is not all. Disagreements over Chinese tax and tariff discrimination against other EU imported products and market access are also at the forefront of the trade agenda.
- 2.4 European services companies are having difficulties breaking into the Chinese market as they are often discriminated against. Since 2001, although China has signed agreements to open its market and has granted 22,000 telecoms licenses in China, only seven were granted to foreign companies. China maintains investment and ownership caps in many sectors such as banking, construction and telecommunications. Foreign law firms in China are not allowed to employ Chinese lawyers and are not permitted to participate in bar exams to gain Chinese qualifications.

Lax Intellectual Property Rights Enforcement

- 2.5 Infringement of European intellectual property rights (IPR) is often cited as unfair trade practices on the Chinese side. For European firms in China, IPR theft remains a huge problem. More than 80% of all counterfeit goods seized at European borders in 2006 came from China. Seven in ten European firms operating in China say that they have been the victim of IPR violations. In 2007, European manufacturers estimated that IPR theft cost them 20% of their potential revenues in China.
- 2.6 Correspondingly, Chinese companies are undergoing more and more IPR infringement investigations. Chinese goods displayed in trade fairs in Europe were often found to be unauthorized copies of European ones and were thus

held by the European customs. In some cases, the responsible persons of these Chinese companies in question were prosecuted for IPR infringement.³

2.7 Though China might cite its continuous efforts at revamping its laws and redoubling its efforts at enforcement, the incidence of copyright piracy in particular is not reported to be declining. A perceived failure to do much to address the problem successfully is one of the reasons why some Europeans have been advocating tough measures against China.

2.8 IPR infringement in China, on an average basis, is not much worse than anywhere else. But since China is the world's largest and fastest growing economy, the problem is put under spotlight and thus magnified. Indeed, the Chinese government has taken several steps to protect IPR and is feeling frustrated about what more it can do. From purely legalistic point of view, however, the government can do more by getting rid of the minimum thresholds for prosecution; destroying seized materials rather than removing labels and reintroducing those products into the supply chain; and granting copyright protection for products awaiting approval for distribution in China.

Antidumping Procedures

2.9 In the area of antidumping, China's increasing resort to this trade defense instrument system may likewise lead to dissatisfaction among EU exporters to China. China has since its WTO entry become one of the most frequent users of the antidumping mechanism among the WTO members. EU, together with other WTO members, has also raised the issue of arbitrary imposition of antidumping investigation and called for transparency in the investigation procedures.⁴ The accumulating dissatisfaction may also lead to trade disputes between China and the EU.

³ For example, at the March 2008 CeBit technology trade fair -- Europe's largest gadget confab --in Hannover, Germany, police raided 51 exhibitors' booths for suspected patent violations, among which 24 were from China. See http://news.cnet.com/8301-10784_3-9887955-7.html.

⁴ See, for example, the EC Communications to the Trade Policy Review Body concerning China's trade policy review. Available at WT/TPR/M/161.

Industrial Policies

2.10 China's long maintained sector-specific industrial policies are impacting on the competitiveness of EU firms in China and can serve as *de facto* barriers to market access for EU firms. Earlier on 17 September 2003, the EU successfully committed China to a dialogue to cope with issues regarding industrial policies.⁵ In spite of this, the issue repeatedly comes to the forefront of China-EU trade relations. For example, during Trade Policy Reviews, EC raised the issues twice, accusing China of failing to comply with WTO rules that directly or indirectly impact on competitiveness and productivity. In fact, in the semiconductor chips case in the WTO, it was the industrial policy that triggered complaints from the EU as well as the US.⁶ Also, in the auto parts dispute in the WTO,⁷ the EC again attacked China's automobile industrial policy, i.e., Policy on Development of Automotive Industry.⁸

China's Raw Material Export

2.11 In January 2004, China sharply restricted its coke exports claiming increasing internal demand and production cut backs due to environmental reasons. Following several rounds of threats and ensuing consultations by China and the EU in both 2004 and 2005, China returned to the old system of traditional export volumes at reasonable price levels. China is committed to reform its export licensing systems to make it conform better to WTO rules.⁹

⁵ Minutes of the Meeting for Establishing the Framework of the Industrial Policy Dialogue, available at http://ec.europa.eu/enterprise/enterprise_policy/gov_relations/china_regul_coop_dialogue/minutes_17-09-2003.pdf.

⁶ In order to encourage foreign chips manufacturers to build facilities in China, China places a 17 percent tax (tax on foreign manufacturers) on semiconductors but gives local manufacturers rebates, thereby providing the latter with a substantial advantage. On 17 March, the EU, together with the US lodged complaints concerning the chips tax rebate. The dispute ended with China phasing out its tax rebate policy in July 2004.

⁷ China – Measures Affecting Imports of Automobile Parts, see WTO DS339, available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds339_e.htm.

⁸ Order No. 8 of the National Development and Reform Commission, 21 May 2004.

⁹ The EU launched antidumping investigation on China's coke and has imposed a relative tariff of 32.6 euros per ton since 2000. After the EC's suspension of the antidumping duty, the Chinese government adopted an export license system and a quota administration system for coke export on 1

- 2.12 China's restrictions on the export of rare earths and other strategic resources were another issue of contention. For example, as major Chinese suppliers in the global rare earths markets used to compete for greater market shares by lowering their prices, the Chinese imposed quota restrictions on the export of rare earths to ensure less accidental production cost in terms of environmental degradation and higher export pricing, the latter to the dissatisfaction of EU importers. Similarly, trade in nonferrous metals is still subject to export taxes and obstacles alike.

Exchange rate policy

- 2.13 The exchange rate policy of a WTO member in general, is not regulated by WTO disciplines. However, it has been complained that China intervenes massively in the foreign exchange market to maintain a hugely undervalued yuan, thereby boosting its international competitive position. China's adoption of the currency peg in 2005 or the "managed floating exchange rate based on market supply and demand" as a result of the exchange rate system reform has gained a hold in trade policy debates.
- 2.14 There has been a growing chorus that the value of the renminbi should be raised or immediately floated to let market forces decide its value. In the eyes of the critics, China's exchange rate policy allows Chinese firms to export goods to the EU at artificially low prices, resulting in EU job losses. However, Chinese processing industries are unhappy to see a sharp rise in the renminbi value, which hitherto would eat substantially into their thin profits. Moreover, there is some justification for China's fears that an abrupt move to a freely floating exchange rate now, particularly if accompanied by an abolition of their controls on financial outflows, could trigger capital flight and jeopardize their economy in view of the fragility of their banking system.

January 2004. On 31 March 2004, the EC responded by threatening to refer the dispute to the WTO dispute settlement mechanism. On 9 May 2004, the EC further threatened that failure to reach an agreement in 5 days' time on coke export would lead to the initiation of the first dispute against China in the WTO. This angered China which responded with an immediate withdrawal of tax rebate for coke export on 24 May. On 26 May 2004, the EC issued an ultimatum prompting China to cancel coke export restriction by 28 May to avoid an imminent dispute in the WTO. The two parties reached a settlement on 28 May.

- 2.15 Accordingly, the mounting pressure from the EU as well as US has induced only slight changes in the Chinese exchange rate regime. Renminbi has appreciated about 20% in value against the dollar, since July 2005. To the dismay of the EU, during this same period, the renminbi had weakened some 10% against the euro and hurt European competitiveness. Economists argued that the problem is with the weak dollar and not the strong renminbi. So long as the Chinese currency continues to track the dollar, nothing can be done about this.
- 2.16 The protagonists contend that the undervalued renminbi violates Article XV(4) of the General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Subsidies and Countervailing Measures. To force a substantial revaluation, interested US groups are looking to advance a case against China in the WTO. It is likely that the EU will join the US again. Fortunately or unfortunately, the chances of a US (and EU) legal victory in the WTO are modest, and the WTO Dispute Settlement Body (DSB) would most likely reject the claims.¹⁰ Similarly, while a policy case against the renminbi value can be made in the International Monetary Fund (IMF), a legal case has no supporting precedent and faces an uphill battle.¹¹

Ways to Monitoring

Multilateral means

- 3.1 To monitor China's compliance with WTO obligations, the EU employs multilateral means, such as WTO's dispute settlement mechanism (DSM) and trade policy review mechanism (TPRM), that are built within the WTO framework.

¹⁰ For a detailed comparison of China's exchange rate policy and the WTO agreements, see Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, *US-China Trade Disputes: Rising Tide, Rising Stakes*, The Institute for International Economics, August, 2006, pp. 17-24.

¹¹ Under IMF rules, China has the right to peg its currency -- but it does not have the right to intervene massively in the foreign exchange market. For a systemic analysis of the compatibility of China's exchange rate policy and the Articles of the IMF, see Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, *US-China Trade Disputes: Rising Tide, Rising Stakes*, The Institute for International Economics, August, 2006, pp. 24-26.

- 3.2 The DSM is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means to settling disputes, the rules-based system would be less effective because the rules could not be enforced. The mechanism underscores the rule of law, and makes the trading system more secure and predictable. The mechanism is based on clearly defined rules, with timetables for completing a case. First rulings made by a panel -- unless appealed, and appeal reviews -- when appealed, are endorsed automatically by the DSB comprising WTO's full members.
- 3.3 A dispute arises when a country adopts a trade policy measure or acts in such a way that one or more fellow-WTO members consider as breaking WTO agreements or failing to abide by its obligations. The EU did not hesitate to take advantage of the WTO dispute settlement mechanism when China is perceived to have been in such a state. Since China's WTO entry, the EC has launched 2 complaints or joined the US in making a complaint against China.¹² The latest case took place on 3 March 2008 when the EU formally requested consultations at the WTO over measures that affect the operation of foreign financial information suppliers in China. China has prevented foreign suppliers of financial information from providing their services directly to their clients.¹³
- 3.4 However, the aim of such consultations is not to pass judgement but to settle disputes, through consultations if possible. By July 2008, only 2 of the nearly 8 cases against China had reached the full panel process. The rest have either been notified as settled "out of court" or remain in a prolonged consultation phase. The consultation condenses room for confrontation.

¹² The EU joined the US in the first ever complaint against China in the WTO over tax breaks for chip makers in China. <http://www.iht.com>, 1 April 2004.

¹³ Foreign suppliers are now required to operate through an agent under the umbrella of Xinhua itself. Moreover, Xinhua has recently launched a financial information service in direct competition with foreign suppliers. The relevant Chinese measures appear to breach China's GATS commitments on national treatment and market access, which allow foreign companies to operate in China at no less favourable terms than local ones. It is also contrary to obligations to maintain existing rights of companies and to provide regulatory independence, which China committed to ensure at the time of its WTO accession in 2001.

3.5 The EU also uses the regular TPRM of the WTO to address its concerns. Trade Policy Reviews (TPR) are mandated in the WTO agreements to regularly examine and evaluate members' trade and related policies. Significant developments that may have an impact on the global trading system are also monitored. The EU, which in this respect, treats China as a normal and important trading partner, uses the review to press China on key issues such as government interference, transparency, standards, intellectual property rights protection and discrimination against EU firms.¹⁴ China has undergone five rounds of transitional TPR¹⁵ and two rounds of regular TPR at the WTO, and passed both reviews.

Bilateral means

3.6 At the bilateral level, there are Ministerial meetings, meetings between senior officials, an annual Joint Committee at Ministerial level and an Economic and Trade Working Group. At the 2007 EU-China Summit, a High Level Economic and Trade Dialogue mechanism (HLM), as well as High Level Dialogues on exchange rate issues and on macroeconomic issues were established.¹⁶ The HLM, which institutionalized the dialogue between the EC and the State Council of China at Vice-Premier level, is designed to deal with issues of strategic importance to EU-China trade relations, investment and economic cooperation. There are also, at present, ongoing negotiations for a Partnership and Cooperation Agreement.¹⁷

3.7 The less visible but flourishing area of exchanges on sectoral policies and technical issues are 'sectoral dialogues' between China and Europe. These

¹⁴ For the second TPR from 21-23 May 2008, for example, the EU submitted more than 170 questions to China.

¹⁵ The Protocol on the Accession of China designed a Transitional Trade Policy Review specifically for China, which is conducted annually for 8 consecutive years starting 2001.

¹⁶ The HLM was agreed upon at the November 2007 Summit by President Barroso and Premier Wen Jiabao to address the imbalance in trade flows between the EU and China. The broad remit of the HLM is to examine the global trading system; strategic bilateral trade-related issues; investment; innovation, technology and IPR; and EU-China economic cooperation. The mechanism is to function as a complement and reinforcement to established EU-China dialogues.

¹⁷ http://ec.europa.eu/external_relations/china/dialogue_en.htm.

dialogues have grown considerably in recent years, covering a wide range of areas from science and technology to enterprise regulation, and from environmental issues to education and the information society. All the bilateral channels can be used to address EU's concerns relating to China's compliance with the WTO commitments.

Unilateral means

- 3.8 Besides multilateral and bilateral means, the EU also employs unilateral means to monitor China's WTO compliance. It adopted various regulations and directives to compel China's compliance with WTO commitments. A typical example is EU's adoption of product-specific safeguard measures against Chinese textiles and apparels.
- 3.9 Broadly speaking, technical assistance that is designed to help China comply with its WTO obligations belongs to the category of unilateral monitoring means. Immediately after China's accession to the WTO, the EU offered technical expertise in the form of the EU-China Programme for China's Accession to the WTO to help China adjust to WTO rules and standards. After this first program, the EU and China embarked on a much more ambitious EU-China Project for Support to China's Integration into the World Trading System, commonly referred to as the EU-China Trade Project. The five-year project started in June 2004, with a pledge of EUR15 million by Brussel and another EUR 5.6 million by China.

EU's and US' Approach to Monitoring China's Compliance with WTO commitments

- 4.1 To some extent, both the EU and the US share similar concerns in their trade relations with China. Over the past decade the widening US-China trade deficit has been a focal point of the bilateral relations, and has often been portrayed as a cause for overall US current account imbalances. Real public concerns are, however, rooted in the perceived economic threat of import competition from China.

- 4.2 Perceived unfair import competition is similar and in areas concerning illegal export subsidies, lax enforcement of intellectual property rights, restricted market access, and an undervalued national currency.¹⁸
- 4.3 These concerns have fueled calls for legislation to prevent unfair practices. In February 2005, the US Senate passed the Byrd Amendment, encouraging American companies to file anti-dumping investigation applications by awarding the revenue collected from the resultant tariffs to litigating companies. Other China-specific legislations proposed since then include a bill declaring exchange rate protection to be an illegal subsidy for which US firms can seek compensation.¹⁹
- 4.4 However, compared with EU's approach, the US approach towards the monitoring of China's compliance are even more prominent. Firstly, the EU has been seen to adopt a distinct attitude towards China's rise. The US sees China as a competitor, and is somewhat intolerant of China's rise. Indeed, for the US, its aversion to the prospect of a strong prosperous China under an authoritarian state is more palpable than the EU's. The EU and China have pledged to a comprehensive strategic partnership while the US views China as a stakeholder at best. The political tolerance on the EU side, cemented in the "Comprehensive Strategic Partnership",²⁰ is supposed to lower the decibel level of EU's monitoring.
- 4.5 Secondly, the EU differs from the US on the perception of China's compliance itself, at least during the transitional period. Both the EU and China have recognized that China has achieved a lot since accession, though issues of concern remain. The EU seemed to be sympathetic to the immensity of the task faced by China, and was found during the transitional period to be more

¹⁸ Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, *US-China Trade Disputes: Rising Tide, Rising Stakes*, The Institute for International Economics, August, 2006, pp. 4-10.

¹⁹ Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, *US-China Trade Disputes: Rising Tide, Rising Stakes*, The Institute for International Economics, August, 2006, p.23

²⁰ In a Joint Statement of the Ninth EU-China Summit on 9 September 2006, both parties proclaimed the existence of the Comprehensive Strategic Partnership. Since January 2007 China and EU have started negotiating for a comprehensive Partnership and Cooperation Agreement.

tolerant of non-compliance matters on the part of China. The EU was more willing to seek solution through consultations, dialogues and cooperation programmes than the US.²¹

4.6 For example, for the first time in the history of the world trading system, a monitoring task force was established by the US under the auspices of the Department of Commerce to monitor Chinese compliance with WTO commitments. As legislative bodies—whether European or American — tend to be more responsive to domestic industrial pressure, the US Trade Representative’s Office annually submits a report on China’s WTO compliance to the Congress to launch new defense initiatives against China; the EU did not follow the course.

4.7 Thirdly, although the EU is a single customs union with a single trade policy and tariff, it takes time to build up consensus among its 27 members. For the EU it is difficult to come to a single policy toward China; each member state has its own history of dealing with China, and some of them have competing economic interests. The EU is thus not as efficient as the US in dealing with China.

Effects of Monitoring

Positive effects

5.1 On the positive side, monitoring helps China implement its commitments and bring institutional changes that are necessary for the development of its market economy.

5.2 As far as the multilateral mechanisms that are used to monitor China’s WTO compliance are concerned, they have the effect of minimizing the occurrence rate of trade disputes and keeping disputes at a manageable level. For example, throughout the years since its accession to the WTO, China has been learning

²¹ Chris Patten, China and Europe: an important partnership, 6 November 2002. available at <http://www.chrispatten.org.uk/speeches/ch061102.htm>.

not to view the use of WTO dispute settlement mechanism as hostile, and instead, to view lengthy negotiations as a normal way mature trading partners used to resolve their differences. China is also learning to use the DSM particularly by way of third party involvement in disputes and has become comfortable in using the mechanism.

5.3 Empirical evidence shows that the use of a sound dispute settlement mechanism by one party has the effect of defusing mounting political pressure and the resort to unilateral trade measures on the part of the other party.²² Disputes between China and EU cannot be avoided as trade surges. Fortunately, in this regard, due to the availability of the multilateral monitoring means, i.e., the DSM as well as the TPRM of the WTO, trade disputes between China and the EU are manageable.

5.4 The bilateral monitoring means generally generate positive results. The HLM mechanism, for example, provides a new tool to address issues of mutual concern especially in the areas of investment, market access, IPR protection and other strategic issues related to trade.²³ It can become the perfect venue for resolving some of the disputed issues in the WTO. The consultation phase of the dispute settlement process will be fully utilised and thus ease the stress of a trade dispute.

Negative effects

5.5 However, the scrupulous monitoring of China's WTO compliance has a negative effect. Given that the Chinese is a proud lot, the excessive use of the trade dispute settlement mechanism, and the relentless use of the unilateral

²² It is not difficult to find two disputing countries ceasing their rhetoric wars after they refer a dispute to such international adjudicatory institutions as the International Court of Justice or the WTO Dispute Settlement Body. The recent case between Singapore and Malaysia over Pedra Branca is an example.

²³ From the EU side, the meeting was attended by Commissioners Meglena Kuneva (Consumer Protection), Vladimír Špidla (Social Affairs), Janez Potočnik (Research), Andris Piebalgs (Energy), László Kovács (Taxation and Customs), Louis Michel (Development), Stavros Dimas (Environment) and Peter Mandelson (Trade). The group of Commissioners was in China led by European Commission President Jose Manuel Barroso. It is the largest joint mission abroad for the European Commission in its 50 years of existence.

monitoring (except technical assistance) means, in particular, can complicate trade issues and become a source of prospective trade dispute between China and the EU. China still prefers a less confrontational approach. It is not difficult to find that China was provoked or felt provoked when its trade partners adopted trade legislation against it or brought it to the WTO dispute settlement body while trade disputes in question were being consulted.

Monitoring Continues

- 6.1 Not long after China's accession, the EU seemed to have accepted the fact that problems are to some extent unavoidable, given the formidable task with which China is facing; it was therefore more tolerant of non-compliance matters during the transitional period. The EU was willing to seek solutions through consultations, dialogues and cooperation programmes.²⁴
- 6.2 Almost all of the specific commitments that China made when it acceded to the WTO were due to be implemented by the end of 2006. While monitoring China's WTO compliance during this period was pursued with leniency, monitoring since 2007 has been enhanced. Accordingly, the EU has been working to hold China fully accountable - just as others hold themselves accountable - as a matured member of the world trading system, placing a strong emphasis on China's adherence to WTO rules.
- 6.3 The monitoring of China's WTO compliance could well be a major EU priority in the coming years to ensure that EU firms benefit fully. From late 2006, the EU intensified its frank bilateral engagement with China. In a late 2007 internal document, the EC trade commissioner Mandelson conceded that conciliatory tactics toward Beijing had failed to secure concessions for Europe. He proposed aligning policies more closely with that of the US and called for the greater use of trade laws to hit back at Beijing.²⁵ It also took enforcement

²⁴ Chris Patten Archive, China and Europe: an important partnership, 6 November 2002. available at <http://www.chrispatten.org.uk/speeches/ch061102.htm>.

²⁵ Stephen Castle, 'EU-China trade tensions start to heat up', *International Herald Tribune*, November 6, 2007.

actions at the WTO in key areas where dialogues and rules-based DSM had not resolved its WTO-related concerns. For China, it is alarming if this has become the EU's established approach toward its trade relations with China and the monitoring of China's WTO compliance.

- 6.4 For the EU, the real question is how to help China open its market to more imports and its industries to investments that it still considers as strategic and to provide more incentives for China to protect IPRs. Therefore, a smooth and healthy China-EU trade relation will finally hinge on EU's patience and skills in dealing with a rising China.

APPENDIX:

LAX INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

China is the world's biggest DVD production and export base. In 2003, DVD players manufactured by Chinese enterprises accounted for 70 per cent of the world's total production volume of about 100 million sets. However, all the core technologies were introduced from abroad, including a 4C group comprising Phillips, a European consumer electronics giant, together with Sony, Pioneer and LG Electronics.

Since 2002, 4C and other patent holders of the DVD players began to charge Chinese makers license fees for using core technologies in their Chinese branded DVD exports. Patent fees levied on Chinese DVD player manufacturers have reached as high as US\$27.45 per unit, representing nearly 20 to 30 per cent of their production cost. 4C, represented by Phillips, even petitioned customs protection of intellectual property against Chinese manufacturers of DVD player who were unhappy with paying the disproportional license fees. As a result, exports of Chinese branded DVD players suffered a severe decline in 2004. Exports to the EU by Skyworth, a major local DVD player producer, saw a dip of 95 per cent from that in the same period of 2003. Exports by SVA stood at a mere 16 units to the EU. Changhong, China's home electronics giant, saw its exports to the EU fall 60 per cent to 1,800 units in the first five months of the year 2004.

Source: 'Patent fees drag down DVD player exports', *People's Daily*, August 03, 2004, available at http://english.people.com.cn/200408/03/eng20040803_151685.html.