

GATT MEMBERSHIP FOR CHINA: IMPLICATIONS FOR UNITED STATES TRADE AND FOREIGN POLICY

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1. INTRODUCTION

China, because of its rich cultural traditions and ancient heritage, has historically viewed itself as a bastion of advanced civilization.¹ With this perception, it saw little to gain from international trade involving the embryonic nations of Europe.² This attitude was poignantly evidenced by the Emperor Ch'ien Lang's reply to a summons from King George III, requesting the creation of a trade route between England and China. The Emperor responded: "Our celestial Empire possesses all things in prolific abundance and lacks no product within its borders. Therefore there is no need to import the [wares] of outside barbarians."³ Within centuries, China was to be exploited by these "European barbarians" under a series of forced treaties and trade arrangements.⁴ Later, China experienced the upheaval of revolution⁵ and a self-im-

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¹ See G. HSIAO, *THE FOREIGN TRADE OF CHINA: POLICY LAW AND PRACTICE* 1 (1977). See also Comment, *Textile Import Quotas and United States-China Trade Relations: The Dangers of Protectionism*, 10 BROOKLYN J. INT'L L. 465, 467 (1984) (recounting the Chinese history pertinent to an understanding of the PRC's reaction to U.S. trade restrictions) [hereinafter *Textile Import Quotas*].

² Trade itself, and the merchants involved, garnered little respect in ancient China. *Textile Import Quotas*, *supra* note 1, at 467-68 ("[F]oreign diplomats and delegations were required to perform a complex set of rituals, including the presentation of gifts and ritual prostration before the emperor, in order to gain access to the imperial court. Only after this symbolic acknowledgement of China's cultural and material superiority would foreign visitors be accorded the privileges of guests."); Hoffheimer, *China and the International Legal Order: An Historical Introduction*, 11 CASE W. RES. J. INT'L L. 251, 265 (1979); G. HSIAO, *supra* note 1, at 1.

³ Theroux, *China's Foreign Trade: Principles, Institutions, and Performance*, in *POST-MAO CHINA AND U.S.-CHINA TRADE* 55 (S. Leng ed. 1977).

⁴ The English imposed these trade arrangements upon China after defeating the Chinese in a series of military confrontations. *Textile Import Quotas*, *supra* note 1, at 469 (The Treaty of Nanking (1842) was the first of a series of treaties which "effectively reduc[ed] China to a quasi-colonial State."). See also Treaty of Nanking, Aug. 29, 1842, Great Britain-China, 93 Parry's T.S. 466; J. FAIRBANK, *THE UNITED STATES AND CHINA* 165-69 (4th ed. 1980).

⁵ The communist revolution culminated in the founding of the People's Republic of China on October 1, 1949. Li, *Resumption of China's GATT Membership*, 21 J. WORLD TRADE L. 25, 26 n.13 (1987).

posed isolation under Mao Zedong.⁶

With the ascension of Premier Deng Xiaoping,⁷ the People's Republic of China (PRC) launched its economic expansion.⁸ It sought renewed ties to the capitalist West⁹ and an increased presence in international trade.¹⁰ To this end, the PRC on July 10, 1986, submitted its application for membership in the General Agreement on Tariffs and Trade (GATT).¹¹ The implications for the United States, resulting from this application are the focus of this Comment.

Since China was an original GATT signatory,¹² the PRC is presently seeking to resume its membership status.¹³ It does so in an effort

⁶ During the cultural revolution (1966-76) Chairman Mao, stressing the need for self-reliance, closed the door to foreign trade. Yiren, *China's Open Policy and CITIC's Role*, 39 J. INT'L AFF. 57 (1986).

⁷ Deng returned to power in 1977, one year after Mao's death. Deng consolidated power by rehabilitating the 2.9 million victims of the cultural revolution and reinstating his allies over Mao's chosen successors. Lee, *The Implications of Reform for Ideology, State and Society in China*, 39 J. INT'L AFF. 77, 82 (1986). For an evaluation of Deng's restructuring of the PRC's government and economy, see Clark, *Rejuvenation, Reorganization and the Dilemmas of Modernization in Post-Deng China*, 39 J. INT'L AFF. 119 (1986).

⁸ Deng's Four Modernizations program embodied his plan for the economic restructuring of the Chinese system. See R. TUNG, *U.S.-CHINA TRADE NEGOTIATIONS ix-x* (1982). The program refocused the priorities of the state from furthering class struggle to reviving economic productivity and political stability. Clark, *supra* note 7, at 119-20.

⁹ R. TUNG, *supra* note 8, at ix n.50.

¹⁰ The PRC wishes to normalize diplomatic relations and increase foreign trade in order to acquire the technology and capital necessary for modernization. *Id.* See also Xu, *China's Economic Reform and Sino-U.S. Relations*, 39 J. INT'L AFF. 27, 27 (1986) (stating that the PRC has "come to the conclusion that in order to bring about maximum economic efficiency, [it] must combine state planning with market mechanisms and open up to the outside world."); *Interview: Paul D. Wolfowitz: U.S. China Relations*, 39 J. INT'L AFF. 33, 36 (1986) [hereinafter *Interview: Paul D. Wolfowitz*] (stating that "China's decision to 'open to the West' and focus on its economic development, as well as its less ideological stance on regional and global issues, is helping to shape its prospective role as an important factor in the region's future peace and stability").

¹¹ GATT Doc. L/6017 (in which the Permanent Representative of the People's Republic of China informed the GATT Director General of the PRC's request for GATT 'contracting party' status). See also Washington Post, July 1, 1986, at E3, col. 5 (in which the PRC declared its intention to apply to GATT, the organization regulating global trade).

¹² The GATT was signed on October 30, 1947, by 23 countries, including China. Lansing & Rose, *The Granting and Suspension of Most-Favored-Nation Status for Nonmarket Economy States: Policy and Consequences*, 25 HARV. INT'L L.J. 329, 335 (1984); GATT Doc. L/6017 ("[T]he Government of the People's Republic of China, recalling the fact that China was one of the original contracting parties to the General Agreement on Tariffs and Trade, has decided to seek the resumption of its status as a contracting party to GATT.").

¹³ The PRC does not seek accession to GATT under Article XXXIII as a new member. Rather, it intends to resume the Contracting Party status it maintained as an original GATT signatory. Li, *supra* note 5, at 25. Many academics and politicians

to revitalize its domestic economy and expand trade relations with the international business community.¹⁴ While the implications of acceptance for the PRC are extensive, they fall outside the scope of this discussion.¹⁵ Rather, this Comment will focus on the ramifications of PRC GATT membership for United States trade and foreign policy.

This Comment will first give a brief background on the GATT and the PRC's involvement with that treaty.¹⁶ In order to gain perspective on the potential impact on the United States, the Comment will then evaluate the present status of relations between the two countries and the existing barriers to increased trade. Such an evaluation will include a discussion of PRC trade regulations,¹⁷ U.S. statutes,¹⁸ and the United States-PRC Accord.¹⁹ The direct consequences of the PRC's acceptance will then be explored. This will entail an explanation of the potential for the PRC's Generalized System of Preferences (GSP) status,²⁰ the impact on the existing United States-PRC Accord,²¹ the implications for U.S. trade regulations,²² and the policy considerations resulting from PRC's membership in GATT.²³ Finally, this Comment will conclude that the potential benefits of the PRC's GATT status outweigh any negative ramifications and, thus, facilitate U.S. acceptance of PRC accession.²⁴

refer to the PRC as "joining GATT" as opposed to "resuming GATT status." This may either be a genuine misconception, or a political maneuver to challenge the PRC's position in the application process. *See id.* *See also* Washington Post, *supra* note 11 ("Technically, China will . . . be resuming its seat in GATT, because Nationalist China helped establish the agreement in 1947.").

¹⁴ GATT Doc. L/6017 ("It is the firm belief of the Government of the People's Republic of China that the ongoing process of economic reform will contribute to the expansion of economic and trade relations with the contracting parties, and that the participation of China as a contracting party in the work of the GATT will further the objectives of the General Agreement"); Washington Post, *supra* note 11 (indicating that China filed its application for GATT membership in order to maintain its "open door economic policy" and increase export growth). For a general explanation of China's objectives in joining GATT, see Li, *supra* note 5, at 29-31.

¹⁵ For a discussion of the political, economic, and social ramifications of GATT membership for the PRC, see Herzstein, *China and the GATT: Legal and Policy Issues Raised by China's Participation in the General Agreement on Tariffs and Trade*, 18 LAW & POL'Y INT'L BUS. 371 (1986). For an explanation of the implications of PRC GATT status on the PRC, and on the GATT itself, by a trade official of the Chinese government, who is also the Economic Affairs Officer of the UNCTAD Secretariat, see Li, *supra* note 5.

¹⁶ *See infra* text accompanying notes 25-45.

¹⁷ *See infra* text accompanying notes 46-69.

¹⁸ *See infra* text accompanying notes 70-87.

¹⁹ *See infra* text accompanying notes 88-106.

²⁰ *See infra* text accompanying notes 111-156.

²¹ *See infra* text accompanying notes 157-184.

²² *See infra* text accompanying notes 185-195.

²³ *See infra* text accompanying notes 196-204.

²⁴ *See infra* Conclusion.

1.1 Background on the GATT

The GATT is a post-World War II treaty designed to limit national barriers impeding international trade and market forces.²⁵ Both tariff and non-tariff barriers (i.e., import quotas, licensing requirements, and regulatory actions designed to limit imports) are covered by GATT.²⁶ Since its inception six rounds of tariff reductions, and a seventh round of discussions aimed at reducing non-tariff barriers, have been completed.²⁷ As a result, new participants in the treaty must abide by the decisions of all seven rounds by reducing tariff and non-tariff barriers to levels comparable to those of existing GATT members.²⁸

Presently, ninety-two countries are signatories to GATT,²⁹ and eighty percent of world trade is in compliance with GATT procedures.³⁰ Of those ninety-two countries, six are non-market economies (NMEs).³¹

²⁵ The GATT is a trade agreement. It is not an organization. Its application and enforcement was to be administered by the International Trade Organization (ITO), formed in conjunction with GATT. While the United States accepted membership in the GATT, Congress refused to ratify the ITO. As a result, the ITO failed to gain the support of other GATT signatories, and the GATT became the sole vehicle for international trade regulation. Ehrenhaft, *A U.S. View of the GATT*, 14 INT'L BUS. L. 146-47 (1986). See also Li, *supra* note 5, at 25-26 (failure of the ITO did not preclude the application of GATT).

²⁶ J. JACKSON, *WORLD TRADE AND THE LAW OF GATT* 9 (1969) (stating that those barriers that distort international competition and reduce trade between nations are included within the scope of GATT regulation).

²⁷ Rubin, *Most-Favored-Nation Treatment and the Multilateral Trade Negotiations: A Quiet Revolution*, 6 INT'L TRADE L.J. 221, 224 (1981). The location of the seven rounds and their respective dates are as follow: 1) Geneva, Switzerland, 1947; 2) Annecy, France, 1948; 3) Torquay, England, 1950; 4) Geneva, Switzerland ("Dillon Round"), 1956; 5) Geneva, Switzerland ("Kennedy Round"), 1964-67; 7) Geneva, Switzerland ("Tokyo Round"), 1973-79. *Id.* at 224 n.16. For a general discussion of the first six rounds, see J. JACKSON, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 473 (1977).

²⁸ J. JACKSON, *WORLD TRADE AND THE LAW OF GATT*, *supra* note 26, at 92; Herzstein, *supra* note 15, at 374 (stating that a new GATT member must reduce its own tariffs in direct proportion to the reductions of existing members since the first round).

²⁹ Kennedy, *The Accession of the Soviet Union to GATT*, 21 J WORLD TRADE L. 23, 25 (1987). As of April 1987, there were 92 GATT members. *Id.*

³⁰ The general trend in international trade has been away from bilateral treaties and towards the GATT multilateral trade agreement. Lansing & Rose, *supra* note 12, at 335 n.30. See also Ustor, *The MFN Customs Union Exception*, 15 J. WORLD TRADE L. 377 (1981).

³¹ NMEs are countries with socialist governments. Their economies are not based on free market principles, but rather on centralized governmental decision-making. The state, not supply and demand, determines what goods should be imported and exported and in what amount. The six NMEs presently in the GATT are Cuba, Czechoslovakia, Hungary, Poland, Rumania and Yugoslavia. Grzybowski, *Socialist Countries in GATT*, 28 AM. J. COMP. L. 539, 547. Cuba and Czechoslovakia were original GATT signatories, prior to their conversion to communism. While both retained GATT status,

It has been argued that the acceptance of these NMEs in the GATT violates the treaty's basic assumptions. A NME relies on the state to determine the level and type of foreign trade.³² GATT, on the other hand, is premised on the theory that trade between members is to be determined by market supply and demand.³³ The treaty is intended to reduce the artificial tariff and non-tariff barriers obstructing these market forces.³⁴ Since the state, not the forces of supply and demand, controls imports and exports for the NME, GATT restrictions on tariff and non-tariff barriers are inapplicable.

Despite this disparity, six NMEs have gained GATT status. This is due largely to the NMEs relatively low export potentials and the fact that their membership has been based on special restrictions which

their participation has become limited. The remaining four NMEs were admitted after their conversion to communism. Accession to full GATT membership for these four depended on the attainment of specified conditions that varied depending on the country. *Id.* For a general discussion of the difficulties raised by NME GATT membership and of the various restrictions imposed upon Czechoslovakia, Hungary, Poland, Rumania and Yugoslavia, see M. KOSTECKI, *EAST-WEST TRADE AND THE GATT SYSTEM* (1979). See also Patterson, *Improving GATT Rules for Nonmarket Economies*, 20 J. WORLD TRADE L. 185 (1986) (discussing the alternative systems of regulations through which NMEs may be integrated into the GATT without disrupting trade between GATT members); Liebman, *GATT and Countertrade Requirements*, 18 J. WORLD TRADE L. 252 (1984) (concerning the impact of state trading on the GATT system and the resulting countertrade requirements); Kennedy, *supra* note 29 (concerning the differences between market and nonmarket economies, a history of the integration of NMEs into the GATT, and the potential for USSR membership). For a comparison of the four unique systems of limitations imposed on NMEs and the inapplicability of these restrictions on China, see Li, *supra* note 5, at 34-39; Herzstein, *supra* note 15, at 385-87 (concerning the same four systems of limitations and their varying degrees of applicability to the PRC).

³² Kennedy, *supra* note 31, at 25-26. In NMEs, since international trade is controlled by the state, the state determines what will be exported and at what cost. Import and export determinations are not based on consumer demand or economic efficiency factors but on governmental priorities. "[T]he NME government does not interfere with the market process, but instead replaces it." *Id.*

³³ *Id.* at 28 (stating that "GATT was and still is designed for countries in which market mechanisms operate, that is, where trade occurs on the basis of purely economic considerations"). The three basic assumptions of the GATT are: 1) imports and exports result from the activities of independent enterprises; 2) those enterprises are driven by profit motives; and 3) the enterprises respond to the market forces of supply and demand. Herzstein, *supra* note 15, at 374; M. KOSTECKI, *supra* note 31, at 35 ("The General Agreement was created for market economies and essentially private-enterprise economies. It was unlikely therefore, to provide an adequate framework to deal with centralized economies and essentially state-enterprise economies.").

³⁴ General Agreement on Tariffs and Trade preamble, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT preamble]. The members of GATT seek to expand production, trade, and the full use of world resources "by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." *Id.*

compensate for their non-market economies.³⁵ The PRC, by contrast, has a large population and vast resources that afford it tremendous export potential.³⁶ Furthermore, the PRC has indicated its reluctance to accept additional restrictions that have not been imposed on members with market economies.³⁷ Nevertheless, for reasons articulated later in this Comment,³⁸ the PRC's non-market economy should not impede its accession to GATT.

1.2 Background on China

The Republic of China was one of the original twenty-three signatories to GATT.³⁹ As of October 1, 1949, mainland China became the PRC. Taiwan consequently received both China's United Nations seat and the Chinese membership in GATT.⁴⁰ Taiwan occupied the Chinese seat until March 6, 1950 at which time it notified the United

³⁵ Four approaches to NME GATT membership have been devised. Each is intended to integrate the NME into the GATT community without disrupting the free market balance of trade. See Grzymboski, *supra* note 31, at 547-49 (describing the four general approaches and their impact on NME international trade). The four separate relationship patterns between GATT members and GATT NMEs are as follow: 1) Czechoslovakia, having gained GATT status prior to its conversion to communism, has not been limited by further restrictions but is treated basically as a non-GATT member; 2) Yugoslavia decentralized its economy and created a market system for foreign trade. It thus attained GATT status under the same conditions as a free market nation; 3) Poland and Rumania did not change their economic systems but accepted import commitments requiring each to import a certain percentage of goods from Western GATT members (i.e., Poland agreed to increase GATT imports by 7% annually, while Rumania tied its GATT imports to the average percentage growth of all imports); 4) Hungary modified its tariff system and embarked on a limited economic decentralization in return for GATT status. M. KOSTECKI, *supra* note 31, at 23-32; Herzstein, *supra* note 15, at 385-90; Kennedy, *supra* note 29, at 28-33.

³⁶ "Although half a dozen socialist nations are GATT members, China's massive trading capacity makes the problem of imbalance in market access a much greater one in China's case." Herzstein, *supra* note 15, at 375-76. China's trading capacity results from its abundant natural resources and a low-cost work force of over 450 million. *Id.*

³⁷ The PRC would be unwilling to gain GATT status and then be treated as a non-GATT member, as is the case of Czechoslovakia. Likewise, the PRC refuses to accept import commitments as did Poland and Rumania. Chung-Chou Li, a Chinese trade official and economic affairs officer of the UNCTAD Secretariat, specifically stated that "[t]he experience of Hungary, Poland and Rumania shows that an import commitment is operationally unworkable and special safeguards [applied to NMEs by GATT members] serve only to perpetuate discriminatory quantitative restrictions by the major trading partners against imports from [the NMEs]." Li, *supra* note 5, at 34-37 (describing PRC reactions towards the various systems of restrictions imposed on NMEs in return for GATT status).

³⁸ See *infra* text accompanying notes 100-06.

³⁹ The 24 signatories included: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Rhodesia, Syria, South Africa, Great Britain, Northern Ireland, and the United States. GATT preamble, *supra* note 34.

⁴⁰ Li, *supra* note 5, at 26.

Nations (U.N.) Secretary General of its intention to withdraw from the GATT. The PRC did not accept this withdrawal, and maintained that the withdrawal neither bound the PRC nor invalidated the PRC's claim to GATT status.⁴¹ Since that time, the PRC has applied for, and received, GATT "observer status," allowing the PRC to attend official GATT sessions, council meetings, and seminars.⁴²

The impact of GATT status for the PRC would be extensive. Since more than eighty-five percent of Chinese trade is presently conducted with GATT nations via bilateral treaties,⁴³ membership status would allow the PRC to replace these agreements with a single comprehensive GATT treaty. This would not only integrate the PRC into the international trading community but would also reinforce PRC trade with GATT nations.⁴⁴ In addition, GATT membership would allow the PRC to take an active role in the regulation of international trade and afford it greater access to foreign markets. Finally, GATT status would facilitate the PRC's acquisition of the capital and technology necessary for its modernization plans.⁴⁵

2. EXISTING RELATIONS AND BARRIERS TO INCREASED TRADE

In order to appreciate the full impact of the PRC's GATT status on United States industry and labor, it is necessary first to understand the existing trade relations between the two nations, including the pertinent statutes and policies through which the two nations regulate their imports and exports. This framework will make possible an eval-

⁴¹ *Id.* ("The Chinese government has never recognized the validity of the withdrawal, since the notification to the UN Secretary General came from persons not authorized by the Chinese Government.").

⁴² GATT Doc. L/5712 (Oct. 26, 1984) (noting the PRC's request for GATT observer status); Herzstein, *supra* note 15, at 373-74 (noting that GATT "observer status" affords the PRC access to GATT meetings and seminars); *China Attends GATT Course*, Wall St. J., Aug. 27, 1980, at 18, col. 3 (referring to a training course given by the GATT for international trade specialists).

⁴³ Li, *supra* note 5, at 28.

⁴⁴ GATT nations are less likely to violate multilateral GATT regulations than they are to violate bilateral agreements. This is because a violation of the GATT treaty may serve as precedent for a future violation of the same provision by a GATT member, against the violating party. A violation of a bilateral treaty, on the other hand, leaves the violator open to reciprocal violations from only one other nation. Herzstein, *supra* note 15, at 380. For a current list of the PRC's bilateral trade agreements, see CHINA INTERNATIONAL ECONOMIC CONSULTANTS, INC., *THE CHINA INVESTMENT GUIDE* 1986, 52-58 (1985).

⁴⁵ The PRC currently views international trade as one of the most significant methods of modernization. U.S. DEP'T OF COMMERCE, INT'L TRADE ADMIN., *DOING BUSINESS WITH CHINA* 3 (1980) ("Chinese officials appear to have concluded that even a scaled-down industrialization program cannot be successfully completed without an infusion of foreign plants, equipment, and technology.").

uation of the changes that PRC membership in the GATT will have on U.S. trade and foreign policy.

2.1 PRC Trade Regulation

As a non-market economy, the PRC maintains four regulatory devices through which it controls the level and type of foreign trade: 1) Foreign Trade Corporations (FTCs);⁴⁶ 2) tariff duties;⁴⁷ 3) government-regulated distribution of foreign exchange;⁴⁸ and 4) non-tariff barriers.⁴⁹

2.1.1 Foreign Trade Corporations

Foreign Trade Corporations are corporations owned by the state.⁵⁰ While they conduct the business of the NME, their main purpose is to further government objectives.⁵¹ These objectives often take precedence over the goals of profit maximization and investment return. One of their most prominent roles is the regulation of foreign trade.

In the PRC, each FTC maintains a monopoly over a specified market in the economy.⁵² It controls the manufacturing, distribution

⁴⁶ See *infra* text accompanying notes 50-54.

⁴⁷ See *infra* text accompanying notes 55-58.

⁴⁸ See *infra* text accompanying notes 59-64.

⁴⁹ See *infra* text accompanying notes 65-69.

⁵⁰ FTCs are organized at the municipal, provincial, and national levels. Each level is authorized to do business directly with foreign corporations but is subject to review from the next higher level. R. TUNG, *supra* note 8, at 42 (describing the current reforms underway in the PRC's FTC system). For a description of FTCs at different levels in the PRC government structure and the potential for delegation of FTC responsibility to the cities and provinces, see DOING BUSINESS WITH CHINA, *supra* note 45, at 21-22; Herbst, *Selling Into the People's Republic of China: The Legal Problems*, 15 INT'L BUS. L. 303, 304 (1987) (discussing FTC monopolization by national FTCs of the import/export system and noting that while decentralization may have ended the monopoly, FTCs retained their foreign trade role).

⁵¹ FTCs are often used to regulate employment, maintain consumer prices, improve the balance of payments with other nations, regulate exports and imports, and promote the development of infant industries. Testimony before the Senate Finance Committee, Aug. 6, 1986, at 2 (statement of Charles Owen Verrill) [hereinafter *Verrill on State Trading*]. According to Verrill "[t]rading inconsistent with commercial considerations" occurs when the goal of a corporation is the promotion of "state welfare objectives," not profit maximization. While state enterprises are not *per se* inimical to world commerce, using them to achieve official goals disrupts global trade. *Id.*

⁵² The creation of FTC monopolies makes it extremely difficult for U.S. industry to compete with Chinese goods. *JCCT Briefing Paper: Market Access II-50* (prepared for 1987 JCCT Seminar, Washington, D.C.) ("In most cases, only the Trading Companies of the [PRC] Ministries, Provinces, and Municipalities are allowed to import [foreign goods]. U.S. sellers—facing a monopsony (only one buyer) or a [sic] oligopsony (few, large buyers) for a particular product—find it very difficult to obtain favorable terms of trade."). For a discussion of the countertrade requirements instituted against GATT members employing FTCs or state trading, see Liebman, *supra* note 31.

and marketing of the products within that market. Since the government grants FTCs special access to state financing, affords them hidden subsidies, and does not require them to maximize profits, the FTCs are able to export goods at well below market levels.⁵³ FTCs are also the state agents that determine the amount, type and national origin of imported goods.⁵⁴ FTCs are thus one instrument through which the Chinese government regulates both the export of Chinese goods and the importation of products from foreign nations.

2.1.2 Tariff Duties

The second major restrictive measure by which the PRC regulates foreign trade is the implementation of tariff duties. The PRC maintains a two-tiered tariff system. The first tier affords lower tariffs for those countries with which the PRC retains a reciprocal treaty. The second tier is reserved for "nonreciprocal" countries.⁵⁵ The tariff is paid by a FTC on the goods it imports to the PRC's Custom Bureau, which in turn transfers the money to the Ministry of Finance.⁵⁶ The tariff is effectively an intergovernmental transfer by one government agency to

⁵³ FTCs engaged in commercial activities maintain the potential for serious trade disruption. Due to their state control, they are able to export goods at prices that U.S. companies are incapable of matching. Furthermore, U.S. exports are often unable to compete with FTC products in the Chinese marketplace. For a discussion of the advantages enabling FTCs to gain the competitive edge over U.S. industry see *Verrill on State Trading*, *supra* note 51, at 4-6. See also R.J. MONSON & K.O. WALTERS, NATIONALIZED COMPANIES: A THREAT TO AMERICAN BUSINESS (1983) (describing the advantages of state trading and the impotence of traditional trade remedies in controlling the resulting distortion of international trade).

⁵⁴ If a United States company intends to export to the PRC it must first contact the appropriate FTC and government ministry (i.e., the FTC and the ministry regulating the specific type of commodity to be exported). *DOING BUSINESS WITH CHINA*, *supra* note 45, at 5. For an exhaustive list of the PRC's FTCs and their respective addresses, see *id.* at 36-40.

⁵⁵ Those countries with which the PRC maintains a reciprocal trade treaty limiting tariff duties enjoy minimum tariff rates on the goods they export to the PRC. Those countries which do not maintain PRC trade treaties receive higher tariffs on their products. It is unclear whether this difference in tariffs is ever passed on to the consumer. *China's MFN: What's in it for U.S. Exporters?*, *CHINA BUS. REV.*, July-Aug. 1979, at 34 [hereinafter *China's MFN*]. See also *After MFN: GSP, GATT and IMF-Duty-Free Treatment for Chinese Goods?*, *CHINA BUS. REV.*, July-Aug. 1979, at 31-32. [hereinafter *After MFN: GSP, GATT and IMF*] (PRC refers to its tariff system as having a "normal" rate and a "minimum" rate); *JCCT Briefing Reports: Market Access*, *supra* note 52, at II-48. According to this report, in addition to the two tariff levels, a disguised tariff or an "adjustment tax" may be tacked on to imports. Furthermore, it is not uncommon for customs officials to demand more than the published tariff rates.

⁵⁶ The tariff duties are never really implemented against the foreign corporation. Rather, the FTC transfers part of its foreign capital to the Customs Administration Bureau which in turn sends it to the Ministry of Finance. The Ministry then reapports its tariff collections to the FTCs. *China's MFN*, *supra* note 55, at 34.

another.

Although tariff rates result in a shift of government resources and do not affect consumer demand, their level does have a substantial effect on the amount and type of imports purchased by the PRC. Since each FTC is awarded only a limited amount of foreign exchange with which it may import foreign goods, it will usually choose to import the products of low tariff countries.⁵⁷ In addition, the recent trend in the PRC has been to base import decisions on commercial considerations rather than political objectives, as was done in the past.⁵⁸

2.1.3 Government-Regulated Distribution of Foreign Exchange

The third, and perhaps most effective, form of trade regulation by the PRC is the government's allocation of foreign exchange. In any NME, the state's control of foreign currency determines the amount and type of imports.⁵⁹ This is because the government, not consumers, decides where the nation's foreign currency will be spent. In the PRC, FTCs are allocated foreign currency by the Ministry of Finance.⁶⁰ Thus, the Ministry of Finance determines which FTCs, each having a monopoly over certain products, will receive currency. The amount awarded each FTC in turn determines the amount and type of products imported.⁶¹

⁵⁷ FTCs prefer to import goods from nations designated as "low tariff countries" since they receive a greater proportion of imports to currency expended. It is in the FTCs' interest to allocate foreign currency efficiently and thus avoid the transfer of purchasing power to the Ministry of Finance. *Id.* Furthermore, the difference between the "preferential" rate and the "regular" rate is significant. For most products, the "regular" duty may be as much as 10 to 30% higher than the "preferential" rate. *JCCT Briefing Paper: Market Access*, *supra* note 52, at II-48. *But see China's MFN*, *supra* note 55, at 34-35. The report observes that many Americans and Europeans doubt that tariffs play a large role in determining the PRC's import level. The paper gives three reasons: 1) the difference between the normal and minimum tariff rates are not very large (between 15 and 67%); 2) the government, not the consumers, pays the tariff duty (except for luxury consumer goods); and 3) many goods the state wishes to import, e.g., technologically-advanced machinery or foreign equipment, are exempted from tariff duties altogether. For a list of the minimum and normal tariff duties imposed on foreign goods, see *Import and Export Customs Duties*, HANDBOOK OF TRADE WITH CHINA (1973).

⁵⁸ *After MFN: GSP, GATT and IMF*, *supra* note 55, at 32. For a detailed explanation of the PRC's recent foreign trade reforms, see *infra* text accompanying notes 100-06.

⁵⁹ Grzybowski, *supra* note 31, at 551 (stating that in NMEs, licensing and foreign currency controls, not tariffs, are the favored mechanisms of the import control system). The PRC's State Planning Commission uses resource allocation plans to control investment, purchase, production, and distribution decisions. See Herzstein, *supra* note 15, at 374-75; Friedman, *Enterprise Reform: The Three Li's*, CHINA BUS. REV., Mar.-Apr. 1985, at 24, 26.

⁶⁰ See *supra* note 56.

⁶¹ *JCCT Briefing Paper-Market Access*, *supra* note 52, at II-49 (amount of im-

The situation is problematic because of the PRC's shortage of foreign currency. The Chinese themselves believe that "[t]he main obstacle to the maintenance of the present momentum of China's trade expansion is the shortage of foreign exchange."⁶² In fact, the PRC presently maintains a substantial trade deficit with the United States.⁶³ Since the government may only allocate to the FTCs the amount of foreign currency it currently possesses, its import potential is limited.⁶⁴ Thus, the PRC's restriction of foreign trade is largely the result of its inability to gain substantive access to foreign markets.

2.1.4 Non-tariff Barriers

Finally, the PRC employs a variety of mechanisms to regulate trade, grouped as "non-tariff barriers" for the purposes of this Comment. Such barriers include quotas,⁶⁵ licensing restrictions,⁶⁶ specific import restrictions,⁶⁷ and market structure.⁶⁸ Separately, each is a mi-

ports which a state organization is allowed to purchase is limited by "the foreign exchange allocated by the central government").

⁶² Li, *supra* note 5, at 31 (commenting that this shortage results from the protectionist measures of western nations against PRC goods).

⁶³ From 1971 to 1981 the United States maintained a substantial trade surplus with the PRC. *Testimony Before the ITC by Council President Christopher H. Phillips*, CHINA BUS. REV. 30 (Sept.-Oct. 1982) [hereinafter *Testimony Before the ITC*] cited in Sullivan, *U.S. Trade Laws Hinder the Development of U.S.-PRC Trade*, 22 COLUM. J. TRANSNAT'L L. 135, 138 n.20 (1983). The granting of MFN status to the PRC in 1980 did not remove the PRC's trade deficit. However, the deficit did fall from \$2.7 billion in 1980 to \$1.7 billion in 1981, and then to \$628.4 million in 1982. N.Y. Times, Feb. 3, 1983, at D11, col. 1. In 1985, China's overall trade deficit was over \$14 billion. Washington Post, *supra* note 11, at E3, col. 5.

⁶⁴ The Chinese firmly believe that "[g]iven China's high import propensity and its cautious borrowing policy, the expansion of trade will largely depend on its export earnings. The high import propensity will have to be matched by commensurate access to the world market." Li, *supra* note 5, at 30. This view is further echoed by U.S. authorities. "If the PRC is to continue buying large quantities of American products, there is a clear need for Chinese products to have fair access to the U.S. market to earn the foreign exchange necessary to finance imports." *Testimony Before the ITC, supra* note 63, at 30.

⁶⁵ The PRC, unlike the United States, does not have a quota system *per se*. Rather, the PRC utilizes a licensing system to restrict imports. See *infra* note 66.

⁶⁶ Under the PRC licensing system, only organizations with the correct license (usually FTCs) may import certain goods. The licensing system, while providing an effective vehicle for PRC state regulation of trade, unfortunately serves to frustrate the ability of U.S. industry to determine which Chinese buyers have the ability and desire to import U.S. goods. *JCCT Briefing Paper: Market Access, supra* note 52, at II-49-II-50.

⁶⁷ Import restrictions are limits on the importation of a specific good. Due to the PRC's severe foreign exchange deficit, the government often limits or altogether bans the importation of products it deems unnecessary. These restrictions are often placed on luxury goods. *Id.* See also *China's MFN, supra* note 55, at 35 (noting that consumer goods imported from the West are prime targets for heavy taxation or special restrictions).

nor part of the PRC's import/export regulatory system. When combined, however, they form a substantial barrier through which foreign corporations must negotiate. Their relevance lies in the fact that GATT provisions address their implementation by member nations.⁶⁹

2.2 United States Regulations

The United States maintains two major forms of restrictions through which it regulates trade. The first is a set of laws specifically designed to restrict the importation either of a given product or of a particular nation's goods. The second is the U.S. general system of tariff barriers.

2.2.1 Import Restrictions

The first form of regulation includes a network of statutes that the President or Congress may implement in order to directly reduce foreign trade. Due to the PRC's communist form of government and non-market economy, its products are subject to three such laws.⁷⁰ The statutes involved include the anti-dumping law of the Trade Agreements Act of 1979⁷¹ and the anti-disruption laws found in sections 406⁷² and

⁶⁹ Market structure is a fourth restriction utilized by the PRC to regulate trade. Foreign corporations seeking to sell in the PRC must often go through multiple layers of bureaucracy to receive export rights. The state authorizes each agency and bureau to reduce prices or limit contract rights. *JCCT Briefing Paper: Market Access*, *supra* note 52, at II-50. Furthermore, a concession by a "lower" agency is almost always subject to "higher authority" approval. The PRC bargaining position is enhanced because the foreign corporation must traverse many layers of authority. *See Doing Business with China*, *supra* note 45, at 10-11 (describing the various agencies, commissions, organizations, and officials through which acceptance must be gained in order for a trade contract to be authorized).

⁶⁹ *See infra* text accompanying notes 191-95.

⁷⁰ A communist form of government and a non-market economy are the two requirements that trigger these regulations. The laws are intended to prevent a communist country from dumping state-produced goods, at less than competitive prices, in the United States. Sullivan, *supra* note 63, at 135 (describing the three regulations, and the benefits accruing from a redrafting of the laws). The Chinese view these restrictions in a slightly different light. This is evidenced in Chung-Chou Li's statement that "Chinese exports [to the United States] are subject to various kinds of discriminatory trade measures such as discriminatory quantitative restrictions, selective safeguard measures, and anti-dumping and countervailing measures applied on a basis of discriminatory criteria." Li, *supra* note 5, at 30. It must be noted that this is not an exhaustive list of the regulations through which the President or Congress may regulate PRC imports. The three regulations discussed are the major statutes which currently pose some friction to U.S.-PRC trade relations. For a fourth important regulation, see Trade Act of 1974 § 301, 19 U.S.C. § 2411 (1975) (Responses to Certain Trade Practices of Foreign Governments).

⁷¹ *See infra* text accompanying notes 76-80.

⁷² *See infra* text accompanying notes 81-84.

201⁷³ of the Trade Act of 1974. Each law is intended to protect domestic producers and may be applied solely or in conjunction with the other two restrictions. While the three statutes were intended to supplement the U.S. general tariff system,⁷⁴ their implementation may in fact supercede the general tariff structure.⁷⁵

The principal trade statute regulating goods from the PRC is the anti-dumping provision of the Trade Agreements Act of 1979.⁷⁶ Under this provision, the International Trade Commission (ITC) of the Department of Commerce determines whether the products of an NME are being exported at less than their fair market value.⁷⁷ If the NME export is priced below its fair market value,⁷⁸ and if a domestic industry has been materially injured,⁷⁹ an anti-dumping duty will be imposed in an amount that eliminates the favorable margin.⁸⁰

The second major trade law pertinent to PRC exports is section 406 of the Trade Act of 1974.⁸¹ Under this section, exports from com-

⁷³ See *infra* text accompanying notes 85-87.

⁷⁴ The United States' regulation of foreign trade through tariffs must be discussed in the context of the United States-PRC Accord. The Accord determines the permissible tariff levels each nation may levy on the other's goods. See *infra* text accompanying notes 88-96.

⁷⁵ Tariff duties on Chinese goods are determined by the United States-PRC Accord. This treaty substantially reduces the level of tariffs imposed on imports from the PRC. However, the increase in trade resulting from this reduction may be sacrificed by implementation of the three statutes at issue. See Sullivan, *supra* note 63, at 173 ("[R]ecent investigations of imports from the PRC under the antidumping law and sections 201 and 406 of the 1974 Trade Act demonstrate how these laws, individually or in combination, can eliminate the advantages of MFN status accorded PRC exporters under the Trade Agreement of 1979.").

⁷⁶ 19 U.S.C. §§ 1673-1677 (1979).

⁷⁷ The fair market value of the product is determined according to 19 U.S.C. § 1677b (Supp. V 1981). Sullivan, *supra* note 63, at 135-36 n.3. Under § 1677b(c), there are three methods for determining the fair market value of a product exported from an NME: 1) the price at which the product is sold in the home market of a non-state-controlled-economy country; 2) the price at which a non-state-controlled-economy country exports the good; or 3) the constructed value of such a good as determined by § 1677b(e). 19 U.S.C. § 1677b(c). See also *Testimony before the Senate Finance Committee* (May 15, 1986)(statement of Charles Owen Verrill, Jr.).

⁷⁸ 19 U.S.C. § 1673(1) (1982).

⁷⁹ 19 U.S.C. § 1673(2) (1982). Only material injury or the threat of material injury to an industry in the United States, or material retardation of the establishment of industry, triggers this statute.

⁸⁰ 19 U.S.C. § 1673 (1982). The favorable margin equals the difference between the fair market value of the good and the price of the NME export. See Sullivan, *supra* note 63, at 135-36 n.3. Under sections 1673a(b)(1) & (2), a U.S. firm may petition the Commerce Department to investigate an NME export which is being sold at less than fair market value. The following are two examples of such investigations: *Certain Ceramic Kitchenware and Tableware from the People's Republic of China*, 47 Fed. Reg. 24,231 (Int'l Trade Comm'n 1982); *Canned Mushrooms from the Peoples Republic of China*, 47 Fed. Reg. 31,631 (Int'l Trade Comm'n 1982).

⁸¹ 19 U.S.C. § 2436 (1976). For a discussion of this section and its application to
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munist nations⁸² are subject to a "market disruption" test.⁸³ If the ITC finds that an import from a communist country has caused a disruption in the market of a domestically produced good, it may recommend that a corrective duty or restriction be imposed. The application of these additional restrictions is at the discretion of the President.⁸⁴

Finally, the third regulation applicable to the PRC is section 201 of the Trade Act of 1974.⁸⁵ Under this section, the ITC reports to the President if a foreign good is imported into the United States in such increased quantities as to seriously injure a domestic industry.⁸⁶ If this is the case, the ITC must advise the President of the possible remedies. The options include: 1) an increase in tariff duties or import restrictions; or 2) a grant of assistance from the U.S. government to the domestic industry.⁸⁷

2.2.2 United States Tariff Structure

The second major form of import regulation is the U.S. system of tariffs. Imports from the PRC are governed by the United States-PRC Accord.⁸⁸ This treaty limits the level of tariff duties that may be levied on Chinese goods entering the United States. As previously discussed, the accord allows U.S. exports to receive the PRC's minimum tariff rate.⁸⁹

The United States-PRC Accord awarded the PRC unconditional

foreign trade, see Comment, *The Need for a United States Foreign Trade Policy*, 7 Nw. J. INT'L L. & Bus. 113 (1985).

⁸² Communist nations are defined in § 2436(e)(1) as "any country dominated or controlled by communism."

⁸³ Market disruption is defined in § 2436(e)(2) ("Market disruption exists within a domestic industry whenever imports of an article [competitive with the domestic good] . . . are *increasing rapidly*, either absolutely or relatively, so as to be a *significant cause of material injury*, or threat thereof, to such domestic industry.") (emphasis added).

⁸⁴ The President, not the ITC, actually implements the additional restrictions. However, his actions would be in response to an ITC report, which would define the situation and identify the corrective measures necessary to rectify the disruption. See 19 U.S.C. § 2436(a)(3).

⁸⁵ 4 Trade Act of 1974, Pub. L. No. 93-618 § 202, 88 Stat. 1978, 2014 (1975) (codified at 19 U.S.C. §§ 2251, 2252 (Supp. V. 1975)). For a legislative history of Pub. L. 93-618 [19 U.S.C. § 2251], see 1974 U.S. CODE CONG. & ADMIN. NEWS 7186.

⁸⁶ 19 U.S.C. § 2251(b)(2). The ITC may take several factors into consideration in determining whether a serious injury has accrued. Relevant factors include: idling of facilities, loss of profit, unemployment or underemployment, decline in sales, decreasing profits or wages, or a loss in market share. 19 U.S.C. §§ 2251 (b)(2)(A), (B) & (C).

⁸⁷ 19 U.S.C. § 2251 (d)(1)(A) & (B).

⁸⁸ This Accord is found in the Agreement on Trade Relations Between the United States of America and the People's Republic of China, July 7, 1979, United States-China, 31 U.S.T. 4651, T.I.A.S. No.9630 [hereinafter Agreement on Trade Relations].

⁸⁹ See *supra* text accompanying notes 55-58.

most-favored-nation (MFN) status.⁹⁰ Since the PRC is a communist country, this status must be renewed annually.⁹¹ It requires that the two countries:

extend all concessions or favors made by each in the past, or which might be made in the future to . . . any other state in such a way that their mutual trade will never be on a less favorable basis than is enjoyed by that state whose commercial relations with each is on the most favorable basis.⁹²

Thus, the United States-PRC Accord provides that the United States and the PRC may not impose on each other's products tariffs that are greater than the lowest tariff imposed on any other country with which each nation trades.

It is important to note that there are two types of MFN status: unconditional and conditional.⁹³ With unconditional MFN status, if the United States were to award more favorable tariff rates to France, for

⁹⁰ The United States presently maintains eleven unconditional MFN treaties with non-GATT members, including the PRC. Note, *United States Bilateral Trade Arrangements: Motivations and Legal Problems*, 8 HOUS. J. INT'L L. 279, 297 n.172 (1986) [hereinafter *Bilateral Trade Arrangements*]. The 11 nations are China (1946), Ethiopia (1951), Honduras (1927), Iran (1955), Iraq (1938), Liberia (1938), Muscat and Oman (1958), Paraguay (1959), Thailand (1966), and Vietnam (1961).

⁹¹ Because the PRC has a communist form of government, its MFN status depends upon whether it meets certain requirements. The major stipulation is that the PRC not restrict emigration. If the President finds the PRC responsible for preventing emigration, the Jackson-Vanik Amendment (Title IV of the Trade Act of 1974 section 402, Freedom of Emigration in East-West Trade, 19 U.S.C. § 2432) is activated and MFN status must be revoked or denied. 19 U.S.C. §§ 2432 (a), (b) & (c) (1982). For a detailed explanation of the amendment, its history, purpose, and application to communist countries, see Lansing & Rose, *supra* note 12 at 343-44. The application of the amendment has primarily been used at the behest of Jewish groups lobbying for the release of Jewish refuseniks in Eastern Bloc nations. It has met with some success in Rumania, but not in the Soviet Union. The Amendment has not been applied to the PRC, despite the fact that the PRC prohibits the right of emigration to its own people.

⁹² R. SNYDER, *THE MOST FAVORED NATION CLAUSE* 10 (1948). See also Rubin, *supra* note 27, at 223 (observing that most-favored-nation treatment entails a reciprocal obligation by each nation to accord the other nation those advantages the signatory has granted to any other country).

⁹³ Prior to the eighteenth century, nations only extended unconditional MFN treatment to treaty signatories. The United States was the first nation to grant conditional MFN. In 1778, it granted France MFN status on the condition that France reciprocate in kind. Treaty of Amity and Commerce, art. II, *entered into force* July 17, 1778, 8 Stat. 12, T.S. No. 83. Conditional MFN status continued to be the mode of MFN used until the creation of the GATT, when unconditional MFN took its place. See Rubin, *supra* note 27, at 222; Lansing & Rose, *supra* note 12, at 331-33 (describing the basic differences between conditional and unconditional MFN); Hufbauer, Erb, & Starr, *The GATT Codes and the Unconditional Most-Favored-Nation Principle*, 12 L. & POL'Y INT'L BUS. 59, 59-60 (1980) (noting that immediately following World War II the unconditional MFN principle became a "cornerstone" of world trade); J. JACKSON, *supra* note 27, at 515.

example, the PRC would automatically be entitled to the same terms. Thus, the original treaty between the United States and the PRC would be altered any time one of the two countries accorded a third nation more favorable terms.⁹⁴ With conditional MFN status, new concessions would be given to the PRC only if the PRC would agree to reciprocate in kind. The terms of the treaty would be static even if the United States subsequently granted greater concessions to France.⁹⁵ The only way for the PRC to receive the more favorable "French terms" would be to award to the United States concessions equal to those accorded to France by the United States. The United States-PRC Accord creates unconditional MFN status between the two nations.⁹⁶ Thus, the ceiling on U.S. tariff duties levied on Chinese imports is the lowest tariff rate imposed on any third nation with which the United States maintains a trade treaty.

2.3 Impact of the United States-PRC Accord on United States-PRC Trade

The primary difficulty with an MFN agreement between capitalist economies and nations with non-market economies is that tariffs do not play the same role in regulating trade. Lower tariffs disproportionately favor the NME nation.⁹⁷ The reason is that in a market economy, lower tariffs result in lower-priced imported goods. This translates into heightened demand for the product and a corresponding increase in imports.⁹⁸ By contrast, in an NME, the state levies, pays and collects the tariff duty. Since the state purchases imports, tariffs play almost no role in determining demand. Foreign trade is regulated by non-tariff barriers and government preferences prevail over consumer choice.⁹⁹

While this scenario aptly describes the relationship between Eastern European NMEs and market economies in the West, it cannot be

⁹⁴ M. KOSTECKI, *supra* note 31, at 35-36 (noting the unconditional MFN principle upon which the GATT is based).

⁹⁵ Lansing & Rose, *supra* note 12, at 340.

⁹⁶ Agreement on Trade Relations, *supra* note 88, Art.II; *Bilateral Trade Arrangements*, *supra* note 90, at 297 n.172 (listing the United States' unconditional MFN treaties).

⁹⁷ Lansing & Rose, *supra* note 12, at 340 (describing the reasons NME states receive disproportionate benefits from the exchange of MFN treatment with a market economy nation). M. KOSTECKI, *supra* note 31, at 36 ("[S]tate-trading countries in the GATT have profited from some tariff reductions, often without according any reciprocal concessions.").

⁹⁸ M. KOSTECKI, *supra* note 12, at 41-58 (describing the role of tariffs in regulating trade under the GATT MFN clause).

⁹⁹ Herzstein, *supra* note 15, at 374-75 (Since China regulates trade through non-tariff barriers, a reduction in tariffs does not increase the demand for that product.).

extended to the U.S.-PRC relationship. Granted, when the PRC received MFN status from the United States, the tariff rates imposed on Chinese goods were lowered.¹⁰⁰ Correspondingly, demand for PRC goods increased and imports from the PRC rose.¹⁰¹ However, the Chinese reciprocated by de-emphasizing tariffs as a regulatory device.¹⁰² This was accomplished through a massive decentralization of the PRC's foreign trade structure. The monopoly of the state FTCs was broken and authority over foreign trade was granted to over 1,100 manufacturing and service enterprises.¹⁰³

Technically, the FTCs retained ultimate control over foreign trade. In practice, however, their role became that of a foreign exchange commission facilitating the import and export transactions of Chinese entities with U.S. corporations.¹⁰⁴ In addition to increased autonomy and self determination, many of the 1,100 PRC enterprises acquired responsibility for their own profitability and efficiency.¹⁰⁵ This marriage of financial accountability and autonomous control in the entities directly involved in foreign trade sensitized the system to market forces. Once attuned to commercial considerations, the trading enterprises gained an appreciation for tariff rates.¹⁰⁶ Subsequently, low tariff

¹⁰⁰ For a detailed analysis of the change in tariff rates imposed on PRC goods, after the United States-PRC Accord, see *The Probable Economic Effect on Domestic Industries of the Designation of the People's Republic of China as a Beneficiary Developing Country for the Purposes of the U.S. Generalized System of Preferences*, Report to the President on USITC Inv. No. 332-123, June 1981, United States International Trade Commission, at 3-8 [hereinafter *USITC Report on Economic Effects*].

¹⁰¹ In 1980, the year the MFN accord became applicable, imports of Chinese textiles, apparel, and footwear increased over one hundred percent from the previous year. This is compared to an average annual increase of only 45% for the years 1976 through 1979. *USITC Report on Economic Effects*, *supra* note 100, at 3-8 (describing the effect of MFN status for PRC goods on import levels, and the resulting impact on domestic industry).

¹⁰² See Li, *supra* note 5, at 40 ("The Ministry of Foreign Economic Relations and Trade has been progressively relinquishing direct management of the foreign trade enterprises and moving towards indirect control through macroeconomic measures such as exchange rates, *customs tariffs* and other fiscal and financial policies.") (emphasis added).

¹⁰³ *Id.* In addition to granting trade authority to foreign trade enterprises, the FTC's have also relinquished some of their power over imports and exports to the governments of various Chinese cities and provinces. See *Doing Business With China*, *supra* note 45, at 4. Likewise, the monopoly of power vested in the Ministry of Foreign Trade has been delegated to other ministries, further decentralizing decision-making authority. R. TUNG, *supra* note 9, at 37-42.

¹⁰⁴ Li, *supra* note 5, at 40.

¹⁰⁵ Herzstein, *supra* note 15, at 393. See also generally Chao and Xiaoping, *Private Enterprise in China: The Developing Law of Collective Enterprises*, 19 INT'L L. 1215 (1985) (analyzing the evolution of production from a socialist to a more capitalistic approach).

¹⁰⁶ *China's MFN*, *supra* note 55, at 34 (impact of tariff rates increases in direct proportion to the emphasis on market forces).

U.S. goods received precedence over higher taxed foreign imports.

3. DIRECT CONSEQUENCES OF THE PRC'S GATT STATUS FOR THE UNITED STATES

The PRC's accession to GATT would have significant implications for United States economic and foreign policies. First, GATT status would promote the PRC's request for GSP status.¹⁰⁷ PRC GSP status, in turn, would alter the existing United States-PRC Accord.¹⁰⁸ In addition, the present system of restrictions regulating trade between the two countries would fall under GATT scrutiny.¹⁰⁹ Finally, several United States foreign policy considerations would be implicated.¹¹⁰ Although varied, the consequences of PRC accession for the United States militate in favor of GATT membership.

3.1 Generalized System of Preferences Status

One of the primary implications of the PRC's GATT status is its impact on the U.S. Generalized System of Preferences.¹¹¹ The United States awards GSP status to those nations the President designates as "beneficiary developing countries."¹¹² Once a nation is accorded GSP status, the nations' products may be exported to the United States without the imposition of tariff duties.¹¹³ This program is intended to promote the agricultural, industrial, and technological advancement of third world nations.¹¹⁴ The underlying rationale is that once a country

¹⁰⁷ See *infra* text accompanying notes 111-36.

¹⁰⁸ See *infra* text accompanying notes 137-84.

¹⁰⁹ See *infra* text accompanying notes 185-95.

¹¹⁰ See *infra* text accompanying notes 196-204.

¹¹¹ The United States' Generalized System of Preferences is found in Title V of the Trade Act of 1974, Pub. L. No. 96-392, 93 Stat. 144, 19 U.S.C. § 2461 [hereinafter Trade Agreements Act of 1974].

¹¹² Trade Agreements Act of 1974 § 2462(a)(1). The President maintains the authority to designate a country as a beneficiary developing country. Section 2462(b) lists those countries ineligible for GSP status. The PRC is not one of those listed.

¹¹³ Trade Agreements Act of 1974 § 2461. The President may award duty free treatment provided that he takes into consideration: 1) the impact on that country's economic development; 2) the extent to which other nations accord the country GSP status; and 3) the implications for U.S. producers of like or competitive products.

¹¹⁴ See *Hearings on H.R. 10710 before the Senate Finance Comm.*, 93d Cong., 2d Sess., pt. 1, at 322 (1974) (prepared statement of Ambassador William D. Eberle, U.S. Special Representative for Trade Negotiations), cited in Note, *The Generalized System of Preferences: Nations More Favored than Most*, 8 L. & POL'Y INT'L BUS. 783, 785 n.18 (1976) [hereinafter *Generalized System of Preferences*]. The creation of export industries in a third world nation, expands that nation's economic base and creates opportunities for growth in other sectors of the economy. This promotes economic stability and furthers the advancement of the underdeveloped nation's standard of living and technology. See *id.* at 785.

develops a stable economy and begins to generate adequate foreign exchange, it will open its domestic market to foreign products. This in turn expands the worldwide market for U.S. exports.¹¹⁵

Since the PRC is a communist country, it may only receive GSP status under Title V of the Trade Agreements Act if: 1) its products currently receive nondiscriminatory treatment; 2) it is a contracting party to the GATT; 3) it is a member of the International Monetary Fund (IMF); and 4) it is not dominated by international communism.¹¹⁶ Since China presently maintains MFN status and is a member of the IMF, requirements (1) and (3) are satisfied. The fourth requirement is met because the phrase "dominated by international communism" has been interpreted to mean those nations dominated by the Soviet Union,¹¹⁷ and China certainly does not fall into that category. The single factor preventing the PRC from attaining GSP eligibility is its lack of GATT status.

3.1.1 PRC Expectations and United States Safeguards

Should the PRC receive GATT membership, it would fully expect to be accorded GSP status by the United States. This is evidenced by a recent statement from a Chinese Trade Official that "[t]here should be no serious difficulties for the contracting parties [to GATT] to accept China's claim of developing country status [thereby entitling it to GSP status] under relevant GATT provisions."¹¹⁸ This position is supported

¹¹⁵ *Hearings on H.R. 5897 Before the Subcomm. on Trade of the House Comm. on Ways and Means* 94th Cong., 1st. Sess. 83 (1975) (statement of Nathaniel Samuels, member of the Comm'n on United States-Latin American Relations), cited in *Generalized System of Preferences*, *supra* note 114, at 785 n.23.

¹¹⁶ Trade Agreements Act of 1974 § 2462(b)(1). See also Hackney & Shafer, *Protectionism and Developing Countries: The Impact on Trade and Debt*, 23 *STAN. J. INT'L L.* 203, 207 (1987) (countries dominated by communism or members of OPEC may not receive GSP status); *Generalized System of Preferences*, *supra* note 114, at 783-84 (noting that in addition to the four requirements mentioned, the President may take into consideration the level of the developing nation's economy and amount of access it accords to United States' products); *China Gains from GATT in Doubt*, *J. COM. & COM.*, Sept. 2, 1981, at A1, col. 2 (major benefit of GATT status is the fact that it fulfills the final requirement necessary for the PRC to receive GSP eligibility).

¹¹⁷ The term "international communism" was incorporated into Article V to prevent the granting of GSP benefits to Eastern European nations. It was part of the United States' containment policy and was intended to isolate those countries controlled by the U.S.S.R.. Since the PRC is both politically and economically independent from the U.S.S.R., the rationale behind the clause does not apply to the PRC. Yugoslavia and Rumania are also exempted from this term. *THE STRUCTURE AND EVOLUTION OF RECENT U.S. TRADE POLICY* 228 n.6 (R. Baldwin & A. Krueger eds. 1984).

¹¹⁸ LI, *supra* note 5, at 42 ("China is a low income developing country, with a *per capita* GNP only marginally above that of the least developed countries, as established by the criteria set forth by the United Nations, and many times lower than that

by several factors. Most importantly, the United States has already committed itself to PRC GSP status by stating in Article Two, paragraph three, of the 1979 Trade Relations Treaty, that it recognizes the PRC as a developing nation.¹¹⁹ In addition, the World Bank treats the PRC as a developing country for loan and credit purposes,¹²⁰ and every industrialized nation other than the United States currently affords China GSP status.¹²¹ While the President retains discretion over this decision, refusing GSP eligibility once the four requirements have been satisfied would severely strain U.S.-PRC relations.

In the event that the United States does grant GSP benefits to the PRC, the safeguards and limitations within the GSP legislation ensure that domestic industry will not be adversely affected. For example, if any one GSP country exports greater than twenty five million dollars worth of a given product or more than fifty percent of a specific U.S. import, it must pay full tariff duties on all of its exports to the United States.¹²² This penalty will be imposed not only on the goods exceeding the \$25 million or 50% mark, but on all exports.¹²³ Furthermore, import sensitive or labor intensive articles such as textile, watches, footwear, electronics, steel and glass are excluded from duty free treatment. The President may also exclude any other imports, which he decides fall within these categories.¹²⁴ Even if the fifty percent or twenty five million dollars export ceilings have not been breached, the President may determine that a country has become competitive for a given article and withdraw GSP benefits for that product.¹²⁵ Finally, once a GSP

of the more advanced developing countries.”).

¹¹⁹ Agreement on Trade Relations, *supra* note 88, art. II, para. 3 (“The Contracting Parties note, and shall take into consideration in the handling of their bilateral trade relations, that, at its current state of economic development, China is a developing country.”).

¹²⁰ Li, *supra* note 5, at 42.

¹²¹ *Id.*; *China Gains from GATT in Doubt*, *supra* note 116, at A3, col. 1.

¹²² Trade Agreements Act of 1974 § 2464(c)(1)(A), (B). The \$25 million figure is adjusted annually in relation to the Gross National Product of the preceding year. The 50% value is calculated in terms of the total appraised import value of a given article during the calendar year.

¹²³ *Hearings on H.R. 6767 Before the House Comm. on Ways and Means*, 93d Cong., 1st Sess., pt. 15 at 1480 (1973) (statement of Charles R. Frank, Jr. of the Brookings Institution), cited in *Generalized System of Preferences*, *supra* note 114, at 788 n.50 (explaining that “if a country exports \$1.00 more than \$25 million worth of a particular article, the entire \$25 million plus the \$1.00 will be subject to [the] regular [tariff] duty”).

¹²⁴ Trade Agreements Act of 1974, § 2463(c)(1) (listing the “import-sensitive articles” and according the President discretion to create new “import-sensitive article” categories). See also *Generalized System of Preferences*, *supra* note 114, at 784-87 (analyzing the rationale and mechanics of eligibility); Hackney & Shafer, *supra* note 116, at 207 (describing the requirements of GSP eligibility).

¹²⁵ This safeguard was enacted in the 1984 legislative renewal of GSP. See Trade

country achieves a per capita GNP of \$8,500 it loses its beneficiary status and is subject to full tariff duties.¹²⁶

In addition to these economic limitations on GSP benefits, certain political restrictions exist as well. For example, a country which has not reduced its trade barriers to U.S. exports, services, or investment is subject to GSP revocation.¹²⁷ Furthermore, any country that fails to respect worker rights or intellectual property patents may be excluded from GSP benefits.¹²⁸ Therefore, if there is any indication that a U.S. agricultural, manufacturing or service industry is being adversely affected by a foreign nation's GSP eligibility, the President maintains a variety of mechanisms with which to disqualify that nation. The PRC's GSP status thus poses little threat to the traditional U.S. capital and labor interests.

3.1.2 Benefits and Disadvantages of the U.S. GSP Program

While the potential for market distortion is limited by the safeguards incorporated within the GSP legislation, certain U.S. industrial and labor groups have lobbied against the GSP program. Their main argument is that GSP products are merely subsidized imports from third world nations that displace "American-made" goods.¹²⁹ These groups believe that the result of the U.S. GSP policy is the transfer of industrial facilities and the exportation of "American jobs" to third world nations.¹³⁰

What these groups fail to acknowledge is that the export sector is

and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (codified as amended in scattered sections of 19 U.S.C. (Supp. III 1985)).

¹²⁶ Trade and Tariff Act of 1984, *supra* note 125 § 2464(f) (Supp. III 1985). Once the \$8,500 limit is exceeded, GSP benefits are phased out over a two-year period. *Id.*

¹²⁷ Hackney & Shafer, *supra* note 116, at 208. These political limitations on GSP "Beneficiary Developing Country Status" were created in the 1984 GSP Renewal legislation. See Trade and Tariff Act of 1984, *supra* note 125.

¹²⁸ Hackney & Schafer, *supra* note 116, at 208.

¹²⁹ *Hearings on H.R. 5897*, *supra* note 115, at 109 (statement of Nathaniel Samuels, member of the Comm'n on United States-Latin American Relations, *reprinted in The Generalized System of Preferences*, *supra* note 114, at 790 n.60. The AFL-CIO stated that affording GSP status to foreign nations and "encouraging more exports to the U.S. at this critical period can only spell more lost jobs, more continued unemployment for millions [sic] of U.S. citizens and more adverse shocks to the already hard-hit economy." *Id.*

¹³⁰ *Hearings on International Trade Negotiations Before the U.S. International Trade Comm'n*, vol. 1, at 118 (Augusta, Me., May 9, 1975) *reprinted in The Generalized System of Preferences*, *supra* note 114, at 790 n.9 (The effect of GSP for a given product is "to transfer production facilities from the USA, Western Europe and Japan to the Beneficiary Developing Countries . . . [There is not] a more efficient way to export jobs from the USA.")

the fastest growing manufacturing segment of the U.S. economy.¹³¹ It accounts for four out of every five new jobs created.¹³² Furthermore, as William Cline has noted, "research has consistently shown that job losses are usually attributable to slow growth in domestic markets and rising labor productivity, and that trade in manufactures with developing countries has generated many more export jobs in industrial countries than it has cost in jobs lost to imports."¹³³ Granting GSP status to a developing nation will only help it to generate foreign exchange with which to purchase U.S. exports. GSP status will not contribute to the loss of jobs in the manufacturing sector. If anything, it will help to prevent the future erosion of this segment of the U.S. economy.

In addition, it is well established that service and high technology enterprises are rapidly displacing the heavy industry and manufacturing segments of the U.S. economy.¹³⁴ In these areas the United States maintains a competitive advantage over developing countries.¹³⁵ Because GSP nations do not have the foreign exchange necessary to modernize their economies, they are primarily shut out of the competition for a share in the increasingly worldwide market of such high-technology goods and services.¹³⁶ GSP status enables developing nations to gain the foreign exchange with which to purchase these products from the United States. It does not enable them to compete with the U.S. service and high-tech industries in the domestic or world market.

¹³¹ Brock, *Trade and Debt: The Vital Linkage*, 62 FOREIGN AFF. 1037, 1045 (1984).

¹³² 131 *Id.* (It has been estimated that "each billion dollars in U.S. manufacturing exports translates into 24,000 jobs.") Other reports have estimated the figure to be closer to 25,000 jobs per \$1 billion of exports. HOUSE SUBCOMM. ON INTERNATIONAL DEVELOPMENT INSTITUTIONS AND FINANCE 99TH CONG., 1ST SESS., DEALING WITH DEBT, REKINDLING DEVELOPMENT: THE U.S. STAKE IN THE PERFORMANCE OF THE WORLD'S DEVELOPMENT BANKS 32 (1985), cited in Hackney & Shafer, *supra* note 116, at 222 n.91.

¹³³ W. CLINE, EXPORTS OF MANUFACTURERS FROM DEVELOPING COUNTRIES: PERFORMANCE AND PROSPECTS FOR MARKET ACCESS, 121-22 (1984).

¹³⁴ *Bilateral Trade Arrangements*, *supra* note 90, at 284 (1986).

¹³⁵ Trade between the Western nations and developing countries is usually a transfer of technology and capital from the former, in return for raw materials and labor intensive manufactured goods from the latter. The same holds true for the United States and China. The PRC seeks the capital and technology necessary for modernization, while the United States desires a new source of fossil fuels and new markets for its products. See Sullivan, *supra* note 63, at 135. See also USITC Report on Economic Effects, *supra* note 100, at 1-7 (indicating that future PRC exports to the United States will consist primarily of labor-intensive products).

¹³⁶ In order for the developing nations to compete in services and high technology, they must first gain the foreign exchange with which to modernize their economies. Presently, most developing nations still rely on the export of natural resources or manufactured goods as their sole source of capital. Hackney & Shafer, *supra* note 116, at

3.1.3 Impact of PRC GSP Status on the United States

PRC GSP status will generate the same basic advantages and disadvantages for the United States as would GSP status for any other developing nation. The only difference is that the implications of including China, both positive and negative, are amplified. This is due largely to the PRC's vast market, abundance of cheap labor¹³⁷ and extensive reserves of natural resources.¹³⁸ These factors create tremendous potential for high-volume, low-priced exports of goods and materials from China to the United States.¹³⁹ Consequently, many industrial and labor groups vehemently oppose the elimination of tariff duties on PRC goods that would result from the designation the PRC as a GSP beneficiary.¹⁴⁰

Due to industry's concerns, the ITC published a report analyzing the implications of PRC GSP status for domestic industry. In the report, the ITC estimated that if the PRC had received GSP status in 1980, U.S. imports from the PRC would have increased by \$272 million, or twenty six percent.¹⁴¹ However, even without the reduction in tariff duties, trade between the two nations rose by 14.3% between 1980 and 1981.¹⁴² This minimal impact on United States-PRC trade, as a result of PRC GSP status, has been projected by several market analysts.¹⁴³

¹³⁷ The total labor force of the PRC—450,000,000 workers—is greater than any other nation's entire population, except for India. Engle, *Reforming the Labor System*, CHINA BUS. REV. May-June 1984, at 16.

¹³⁸ The PRC is the world's seventh largest producer of crude oil, ahead of all countries in the Middle East other than Saudi Arabia and Iran, and is tenth in natural gas reserves. *USITC Report on Economic Effects*, *supra* note 100, at 4-17, 4-18.

¹³⁹ Herzstein, *supra* note 15, at 376.

¹⁴⁰ *China Gains from GATT in Doubt*, *supra* note 116 at A1, col. 1 (noting AFL-CIO and various industry opposition to PRC GSP status); *After MFN: GSP, GATT and IMF*, *supra* note 55, at 32 (noting opposition of organized labor in the United States to GSP status for the PRC).

¹⁴¹ *USITC Report on Economic Effects*, *supra* note 100 at 3-4. According to the report, textiles, apparel and footwear imports from the PRC were projected to increase by \$26 million or 6%. Minerals and metal imports were expected to increase \$39 million or 27%. Agricultural imports and chemicals were expected to increase \$56 million and \$73 million, or 48% and 77%, respectively. General manufactured products would increase \$22 million or 29%. Forestry products and machinery/equipment would increase \$47 million and \$5 million, or 93% and 90%, respectively. These figures are in 1980 dollars. *Id.*

¹⁴² *Testimony Before the ITC*, *supra* note 63.

¹⁴³ See *China Gains from GATT in Doubt*, *supra* note 116, at A1, col. 2 (stating that "[t]he ITC [determined] that GSP would not do much for China's U.S. sales"); *After MFN: GSP, GATT and IMF*, *supra* note 55, at 32 (stating that "[e]conomic benefits [from GSP status] would be positive but minimal; one study estimated that MFN would increase U.S. imports from China by 30 percent, while granting both MFN and GSP would raise imports by only 34 percent").

The reasons for this estimated moderate trade increase are varied. First, it must be noted that many PRC exports to the United States are currently duty-free or subject to extremely low tariff rates.¹⁴⁴ Consequently, a reduction in tariffs will not increase the volume of imports in these goods. Second, a substantial portion of the PRC commodities would not be eligible for GSP treatment even if the PRC did receive beneficiary developing nation status.¹⁴⁵ This is because import-sensitive or labor-intensive imports are exempted from duty-free treatment.¹⁴⁶ Third, the GSP program has several limitations that are specifically applicable to the PRC. Examples include the annual dollar limits on GSP goods and the fifty percent ceiling on GSP benefits given to any one beneficiary developing country.¹⁴⁷ Fourth, a large percentage of U.S. imports from the PRC are products not currently produced in the United States.¹⁴⁸ Without the Chinese imports, U.S. consumers would be unable to purchase these goods on the domestic market. Finally, a substantial number of Chinese products already receive MFN treatment. GSP benefits would not significantly reduce tariff duties below

¹⁴⁴ *China Gains from GATT in Doubt*, *supra* note 116, at A3, col. 2. Many PRC exports enter the U.S. market duty-free, and each year U.S. tariffs continue to decline as a result of GATT negotiations. Since the PRC's FTCs can vary prices at will, the U.S. tariff rates have a limited impact on the volume of imports. *Id.* For example, four-fifths of the imports of PRC agricultural products are duty free or are goods not produced in the United States. See *USITC Report on Economic Effects*, *supra* note 100, at 1-4. Three percent of forest product and printed materials enter the U.S. market duty free. *Id.* at 2-4. Raw silk, which accounts for thirty eight percent of textile imports from the PRC, enters duty-free. *Id.* at 3-7. Likewise, all Chinese artworks and antiques are duty-free. See *id.* at 7-21.

¹⁴⁵ The Commission's report on the impact of PRC GSP status for U.S. industry and labor specifically notes the high percentage of PRC goods that are not eligible for GSP benefits. It excludes those products from its analysis. *USITC Report on Economic Effects*, *supra* note 100, Introduction. For example, only 6% of all textile and apparel exports (a segment of the PRC's foreign trade responsible for a major proportion of its export earnings, and equal to between twenty and twenty-five percent of its exported products) would benefit from GSP status. *Id.* at 3-5,3-12.

¹⁴⁶ For a description and analysis of the GSP safeguards and limitations responsible, see *supra* text accompanying notes 122-28.

¹⁴⁷ For a description and analysis of the regulations and statutes responsible, see *supra* text accompanying notes 118-28.

¹⁴⁸ For example, all timber and printed materials from the PRC enter duty-free or are commercially unavailable in the United States domestic market (e.g., bamboo, rattan, and willow). *USITC Report on Economic Effects*, *supra* note 100, at 2-3, 2-4. The same holds true for many agricultural products (e.g., high-quality hog bristles for brushes, water chestnuts, bamboo shoots, and miscellaneous oriental food products). See *id.* at 1-4. In addition, the PRC produces some goods which the United States is unable to produce in sufficient quantities. For example, the United States' demand for petroleum products outstrips both current United States and PRC supplies. This U.S. demand is a major force behind the PRC's development of its petroleum industry. See *id.* at 4-15.

existing MFN levels.¹⁴⁹

While GSP status would not drastically increase the volume of PRC exports to the United States, the resulting expansion in trade would partially alleviate the PRC's shortage of foreign exchange. As previously discussed, the main obstacle to increased trade between the United States and the PRC is the PRC's lack of American dollars.¹⁵⁰ "If the PRC is to continue buying large quantities of American products, there is a clear need for Chinese products to have fair access to the U.S. market to earn the foreign exchange necessary to finance imports."¹⁵¹ Since the PRC is reluctant to purchase exports from foreign nations on credit,¹⁵² it cannot import as many goods as it might otherwise.¹⁵³ Furthermore, while the PRC maintains a cautious borrowing policy,¹⁵⁴ it has accrued some debt to foreign investors.¹⁵⁵ In order to obtain the capital to make interest payments and reduce principle, the PRC must either increase exports or decrease imports.¹⁵⁶ Increased trade with the United States would facilitate the payment of U.S. investors, without reducing the importation of U.S. goods.

It is very likely that PRC GATT membership would result in the designation of the PRC as a beneficiary developing country. This designation would enable the PRC to receive GSP benefits. The safeguards and limitations embodied in the GSP program would prevent this designation from posing a threat to domestic industry and labor. In addi-

¹⁴⁹ *After MFN: GSP, GATT and IMF, supra* note 55, at 32.

¹⁵⁰ *See supra* text accompanying notes 62-64.

¹⁵¹ *Testimony Before the ITC, supra* note 63.

¹⁵² The PRC will only accept foreign credit to the extent that its national sovereignty is not threatened. The PRC has a history of relying too much on foreign credit, and it is careful not to place itself in that position again. R. TUNG, *supra* note 50, at 14.

¹⁵³ The potential PRC market for U.S. exports is nearly limitless. The PRC has the largest population of any nation in the world. With over one billion people, the PRC's domestic market is enormous. *JCCT Briefing Paper - Market Access, supra* note 52, at II-47, II-48 (observing that the PRC's population is four times that of the United States and seven times that of Japan).

¹⁵⁴ Li, *supra* note 5, at 30 ("Given China's high import propensity and its cautious borrowing policy, the expansion of trade will largely depend on its export earnings."); R. TUNG, *supra* note 9, at 13-14. The Chinese have a tradition of financial prudence and are unwilling to exhaust their full line of credit to finance expansion. Thus, while they have ample lines of credit from the world bank and various western countries, they have not taken advantage of their capital supply. *Id.*

¹⁵⁵ R. TUNG, *supra* note 9, at 13-16 (describing the PRC's financial status and priorities in capital expenditures).

¹⁵⁶ For an analysis of the interrelationship between imports, exports, and international debt, see Hackney & Shafer, *supra* note 116, at 222-24. According to the authors, the overextension of U.S. banks to third world nations poses a serious threat to the financial health of the world economy. Increasing the export capabilities of these nations is one remedy that would rectify the situation.

tion, any resulting increase in trade, however modest, would permit the PRC to fulfill its unrealized demand for U.S. products without compromising its credit policy.

3.2 *Impact on the Existing PRC-United States MFN Accord*

The United States-PRC Accord is the second major area of United States-Chinese relations affected by GATT membership for the PRC. According to Article I of the GATT, if the PRC gains GATT status, it will be required to accord MFN status to all other GATT members.¹⁵⁷ The PRC, in return, will receive GATT MFN treatment. The unconditional MFN clause reads:

any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.¹⁵⁸

This clause is the cornerstone of the GATT treaty.¹⁵⁹ It is the essential and binding principle incorporated within GATT to facilitate a free worldwide trading system.¹⁶⁰

While the unconditional MFN principle is considered the major benefit of GATT status, the PRC and the United States already enjoy reciprocal MFN treatment.¹⁶¹ Since Article I paragraph two of the GATT states that previously established preferential agreements will not be disturbed by the application of the GATT MFN clause, the existing United States-PRC MFN Accord will not be preempted.¹⁶²

3.2.1 *Impact on Mutual MFN Treatment*

While both the GATT treaty and the United States-PRC Accord grant unconditional MFN, accession to the GATT also qualifies the

¹⁵⁷ GATT, art. 1.

¹⁵⁸ *Id.*

¹⁵⁹ M. KOSTECKI, *supra*, note 31, at 35 ("Non-discrimination is the central concept of the General Agreement. It is first expressed in the famous most-favoured-nation clause (article 1) . . ."); Lansing and Rose, *supra* note 12, at 334-35.

¹⁶⁰ M. KOSTECKI, *supra* note 31, at 35-36; Lansing and Rose, *supra* note 12, at 335-36 (Despite the creative restrictions nations have devised to obviate the unconditional MFN clause, in principle, it applies to all administrative rules, procedures, custom duties and tariffs used to regulate the flow of foreign trade.).

¹⁶¹ Agreement on Trade Relations, *supra* note 88, art. I.

¹⁶² GATT, *supra* note 34, at art. 1, para. 2. See also *Bilateral Trade Arrangements*, *supra* note 90, at 295 (The significance of United States' bilateral treaties granting unconditional MFN status is the fact that the treaties "in effect make tariff rate concessions beyond the reach of GATT article I MFN treatment.").

PRC for GSP benefits.¹⁶³ These benefits are non-reciprocal.¹⁶⁴ The PRC will receive duty-free treatment on its exports, without a corresponding obligation to reduce tariff duties for U.S. products. GSP therefore, appears to destroy the reciprocity inherent in existing U.S.-PRC trade relations.

However, as discussed, the present United States-PRC Accord embodies the unconditional MFN principle.¹⁶⁵ This form of MFN accommodates non-reciprocity. Recall that under unconditional MFN, if the United States granted more favorable trade concessions to France those terms would automatically accrue to the PRC.¹⁶⁶ The transfer of benefits resulted, regardless of whether the PRC reciprocated with compensatory terms. Thus, while GSP status would afford the PRC preferential treatment beyond that presently received by either nation under MFN, this treatment would not violate the unconditional MFN principle.

In addition, the benefits of GSP status are not substantially greater than those received under MFN. As illustrated, the PRC will not gain a substantive increase in exports to the United States as a result of its designation as a beneficiary developing country.¹⁶⁷ Furthermore, should the PRC receive GSP status, it will still be obligated to accord U.S. exports MFN treatment.¹⁶⁸ Given that the difference between MFN and GSP benefits is minimal, the designation of the PRC as a beneficiary nation will not substantially affect the existing MFN Accord.

3.2.2 Variance Between GATT MFN Status and United States-PRC Accord MFN Status

While the practical differences between the GATT MFN status

¹⁶³ See *supra* text accompanying notes 111-17.

¹⁶⁴ *Id.* GSP is essentially a 10 year waiver of Article I of the GATT. It provides non-reciprocal, non-discriminatory preferences for developing countries. It is not a permanent status. After 10 years, the PRC would become ineligible for continued GSP treatment and would revert back to its original unconditional MFN status. Hufbauer, Erb & Starr, *supra* note 93. See also, Rubin, *supra* note 27, at 233 (“[D]eveloping nations have always been largely exempted from the rule of reciprocity and that of nondiscrimination. Part IV of the GATT reflects their special situation, as does general acceptance of ‘special and differentiated treatment.’”).

¹⁶⁵ See *supra* text accompanying notes 93-96.

¹⁶⁶ *Id.*

¹⁶⁷ For the rationale behind the limited projected increase, see *supra* text accompanying notes 137-56.

¹⁶⁸ The granting of GSP status will supplement, not preempt, the existing United States-PRC Accord. While the PRC would receive additional tariff reductions, it would still be required to maintain existing tariff levels for U.S. goods. See *supra* text accompanying notes 163-68.

and the United States-PRC Accord's MFN status are not great, one technical disparity may obstruct U.S. acceptance of PRC GATT membership. Title IV of the Trade Act of 1974 premises the PRC's continued MFN status on annual reapproval by Congress.¹⁶⁹ This approval is conditioned upon the PRC's maintenance of free emigration policies.¹⁷⁰ The restriction is inconsistent with the GATT MFN principles of Article I.¹⁷¹ If the PRC achieves GATT status, the United States will have to choose one of three alternatives to resolve the discrepancy. First, it may request a stipulation in the PRC Protocol of Accession, allowing the United States to deny MFN treatment upon PRC violation of emigration rights.¹⁷² Second, as an existing GATT member, it may withhold GATT treatment from a newly-entering signatory under Article XXXV.¹⁷³ Third, it may amend Title IV of the 1974 Trade Act to exempt the PRC from the emigration and congressional reapproval requirements.¹⁷⁴ There are several reasons why the third alternative is the most viable one.

The first alternative, that of requesting a stipulation in the PRC Protocol of Accession, in effect incorporates Title IV of the U.S. Trade Act into the Protocol of Accession. The inherent defects of this proposition are self-evident. First, the PRC is unlikely to appreciate U.S. attempts to dictate the prerequisites of its accession.¹⁷⁵ Second, the PRC

¹⁶⁹ Trade Act of 1974, Title IV, 19 U.S.C. § 2432(b) (1982). ("The report [analyzing the beneficiary country's emigration policies] required by this subsection shall be submitted [by the President to Congress] initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as [MFN] treatment is received . . .").

¹⁷⁰ 19 U.S.C. § 2432(a) (1982) ("[P]roducts from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored-nation treatment) . . . [if] such country - (1) denies its citizens the right or opportunity to emigrate; (2) imposes more than a nominal tax on emigration . . .; or (3) imposes more than a nominal tax, levy, fine [or] fee . . . on any citizen [desiring to emigrate].").

¹⁷¹ GATT Article I is entirely unconditional. It does not permit requirements, based on political considerations, to interfere with the free trade principle accorded all GATT signatories. GATT, art. 1, para. 2. Furthermore, the Chinese are fully cognizant of this inconsistency between the Trade Act's emigration restriction and the policies of GATT. *See* Li, *supra* note 13, at 32 ("[T]he United States, under its Trade Act of 1974, grants MFN treatment to China on an *ad hoc* basis, pending approval annually by the U.S. Congress, which is inconsistent with both GATT Article I and Article II of the bilateral agreement.") (emphasis in original).

¹⁷² Herzstein, *supra* note 15, at 383.

¹⁷³ GATT, *supra* note 34, art. XXXV. This section was employed by the United States to refuse GATT treatment to Hungary and Rumania, upon their accession to the GATT. Herzstein, *supra* note 15, at 383; M. KOSTECKI, *supra* note 31, at 30-31 (describing the implications of Rumanian and Hungarian accession for U.S. policy).

¹⁷⁴ 19 U.S.C. § 2432 (c), (e). Section (c) allows the President to waive the applicability of the emigration requirement for a foreign nation seeking or already receiving MFN status. Section (e) lists those countries excluded from § 2432 altogether.

¹⁷⁵ The PRC's national sovereignty has historically been a sensitive subject. After

has historically opposed the imposition of politically-motivated "discriminatory" restrictions on trade.¹⁷⁶ Third, and most important, this type of regulation is exactly the form of trade barrier the GATT was created to preempt. The GATT was intended to facilitate a worldwide economic market, free of artificial barriers.¹⁷⁷ A restriction linking a nation's domestic policy on emigration with the level of tariff duties imposed on its exports is antithetical to the most basic tenants of the GATT. Integration of Title IV of the United States Trade Act into the PRC's Protocol of Accession is an inappropriate response to the problem.

The second alternative is for the United States to refuse the PRC GATT benefits once the PRC gains GATT membership. While Article XXXV enables existing GATT signatories to refuse acknowledgment of a new member's GATT status,¹⁷⁸ it is not politically feasible. The PRC is currently emphasizing its desire to reintegrate itself into the world economy. It has made this objective the cornerstone of its trade policy with foreign nations.¹⁷⁹ For the United States to withhold

years of foreign domination and imposed treaties relegating the PRC to inferior status, the PRC is concerned that foreign nations respect its self determination. See *Textile Import Quotas*, *supra* note 1, at 465-71 (analyzing the PRC's international background, and the resulting PRC position on foreign trade in the 1980's). This trade restriction, based on the PRC's domestic policies, is considered an insult to the PRC's right of self-governance. It is highly unlikely that the PRC would approve its implementation into a GATT document, regardless of the potential economic benefits. *Id.* at 467 ("In recent years, China has maintained an unusually independent and self-reliant posture in international commercial dealings and seemingly has placed national pride and ideological purity above its own best economic interests . . ."). See also Xu, *supra* note 10, at 28 stating:

China is ready to develop relations with all countries on the basis of the five principles of mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's international affairs, equality and mutual benefit, and peaceful coexistence. We will not let our relations with other countries hinge on the similarities or differences of their social systems and ideologies.

¹⁷⁶ For a discussion of U.S. restrictions deemed discriminatory by the PRC, see Li, *supra* note 5, at 31-32.

¹⁷⁷ Hufbauer, Erb, & Starr, *supra* note 93, at 60 ("By embracing the unconditional MFN concept in Article I of the General Agreement on Tariffs and Trade (GATT), the world's major trading nations hoped to replace the preferential trade system of the 1930's with a flourishing system of multilateral trade.").

¹⁷⁸ Article XXXV "provides that the General Agreement shall not apply between any two Contracting Parties if they have not entered into tariff negotiations, or if either of the parties does not consent to such application at the time either party becomes a Contracting Party." Li, *supra* note 5, at 45 (arguing that article XXXV can not be applied to the PRC since the PRC is not joining the GATT, but rather resuming its old GATT membership).

¹⁷⁹ "China's request for resumption of its GATT membership constitutes an element of its open trade policy aimed at achieving a greater degree of integration in the world economy." Li, *supra* note 5, at 29. See also Yiren, *supra* note 6 (stating that the

acceptance of PRC GATT status, once the other signatory nations have accepted the PRC's GATT membership, would be extremely detrimental to U.S.-PRC trade. Such a move has the potential to completely sever U.S.-PRC economic and political relations.

The third alternative is for the United States to amend the Trade Act to exclude the PRC from Title IV. Since Title IV was generally intended to promote human rights in Eastern Block countries, in particular the right of eastern European Jews to emigrate to the West,¹⁸⁰ it has never been invoked against the PRC.¹⁸¹ Given the existing climate of U.S.-PRC cooperation, and the current course of the PRC's economic and political reforms, it is also unlikely that Title IV will ever be applied in this manner. The United States will not sacrifice its gains in trade relations or threaten its anti-Soviet affiliation with the PRC over the PRC's domestic emigration policies.

Even if Title IV might be applied to the PRC, the President maintains the authority under Title IV to waive the emigration requirement. In fact, the PRC has already been granted a waiver from the emigration requirement, subject to annual congressional approval.¹⁸² President Reagan accorded this waiver to enable the PRC to receive MFN benefits.¹⁸³ To facilitate PRC GATT status, Congress must go one step further and remove the annual reapproval stipulation. To do so, it need only add the PRC to the list of countries presently excluded from Title IV.¹⁸⁴

Given that the PRC's emigration policies are unlikely ever to affect its MFN status, there is little rational basis for continuing to link

PRC seeks renewed economic ties with the international trading system to further its own economic revival and modernization).

¹⁸⁰ See *supra* note 91.

¹⁸¹ The PRC claims that it allows free emigration to the West. For this reason, it states that Title IV has no legal basis for application to it. Li, *supra* note 5, at 46. As stated, the United States has not applied this restriction to the PRC for political reasons. See *supra* text accompanying notes 169-84.

¹⁸² Under section (c), the President retains the right to waive the application of the emigration requirements if (A) he has determined that such a waiver would further the objectives of the requirement or (B) he has been assured by the country that it will henceforth comply with the liberal emigration policies espoused by the Act. 19 U.S.C. § 2432(c) (1982). The PRC received this waiver, with the condition that Congress grant annual reapproval. Li, *supra* note 5, at 46.

¹⁸³ Three countries have been waived from Title IV restrictions: Rumania, Hungary, and the PRC. See *Waiver For Socialist Republic of Romania*, Exec. Order No. 11,854, 40 Fed. Reg. 18,391 (1975); *Waiver For Hungarian People's Republic*, Exec. Order No. 12,051, 43 Fed. Reg. 15,131 (1978); *Waiver for People's Republic of China*, Exec. Order No. 12,167, 44 Fed. Reg. 61,167 (1979).

¹⁸⁴ 19 U.S.C. § 2432(e) (1982) ("This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.")

the two. The Congressional reapproval requirement is merely a procedural formality. Unfortunately, it is a formality that has the potential to disrupt U.S.-PRC relations. Title IV should thus be amended to excuse the PRC from this trade limitation.

The existing United States-PRC Accord would be implicated if the PRC were to receive GATT membership. While both the Accord and GATT afford unconditional MFN status, only GATT creates an opportunity for the PRC to receive GSP benefits. These GSP benefits will neither alter the existing unconditional MFN relationship nor substantively change the level of trade between the two nations. Furthermore, while Title IV of the Trade Act is at variance with GATT Article I, this disparity is easily rectified through amendment of the Act. Thus, PRC GATT membership would not significantly alter current U.S.-PRC relations governed by the MFN Accord.

3.3 Implications for Existing United States and PRC Trade Regulations

While the possible accession of the PRC to the GATT has the potential to affect the United States-PRC Accord, it will not undermine the application of existing United States trade regulations. PRC GATT status does not preempt the application of sections 201 or 406 of the Trade Act of 1974 to Chinese exports. GATT Article XIX allows a contracting party to suspend or reduce any tariff concessions which allow a foreign product to be "imported . . . in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers . . . [for] like or directly competitive products."¹⁸⁵ The terminology of GATT Article XIX is compatible with the "market disruption test" embodied in Section 406,¹⁸⁶ and the "serious injury test" incorporated into Section 201.¹⁸⁷ The United States may thus in-

¹⁸⁵ GATT, art. XIX.

¹⁸⁶ See *supra* text accompanying notes 81-84.

¹⁸⁷ See *supra* text accompanying notes 85-87. Under section 201, three requirements must be met before the foreign import is restricted. The ITC must determine that: 1) imports have increased; 2) a domestic industry has been injured or threatened with serious injury; and 3) the foreign imports have caused the injury. 19 U.S.C. § 2251 (Supp. V 1975). If these factors exist the President may increase tariffs, tighten quotas, renegotiate treaties or alter any combination of these restrictions. 19 U.S.C. § 2252 (Supp. V 1975). Should the PRC receive GATT status, the "escape clause" in art. XIX will apply. In addition to the three prerequisites of section 202, section XIX requires the United States to notify the exporting country prior to seeking restrictions. GATT, art XIX, para. 2. Since the notification requirement could be waived, if the delay resulted in further injury to the domestic industry, Art. XIX will not alter the existing protection afforded under section 201.

voke either of these sections without violating GATT principles.¹⁸⁸

In addition, GATT Article VI states that an anti-dumping duty may be "levied on any product of the territory of any contracting party imported into the territory of any other contracting party [provided that the duty is not] in excess of an amount equal to the margin of dumping under which such product is being imported."¹⁸⁹ This Article authorizes the United States to employ the anti-dumping regulations embodied within the Trade Agreements Act of 1979.¹⁹⁰ Thus, as a result of GATT Articles VI and XIX, the accession of the PRC to the GATT would have little impact on existing U.S. regulation of PRC exports.

On the other hand, PRC GATT membership would encourage the PRC to reform its system of non-tariff barriers. The seventh round of GATT discussions specifically dealt with non-tariff trade restrictions.¹⁹¹ This round created six GATT codes which limited the employment of non-tariff barriers by member nations.¹⁹² Unlike general

¹⁸⁸ See generally Li, *supra* note 5, at 45-46 (arguing that while section 201 is in accordance with GATT principles, as illustrated by Art. XIX, section 406 is not). The Chinese do not believe that section 406 should apply to PRC goods. This is because the section is meant to regulate exports from communist nations, and the Chinese believe that their economic reforms have brought PRC industry in line with market forces. If this argument is in fact correct, then PRC exports are not at risk. Section 406 will not be invoked unless PRC products deviate from market prices. Regardless of whether section 406 should or should not apply to PRC goods, the section is not in violation of GATT principles. GATT Article XIX provides for section 406 restrictions. See Herzstein, *supra* note 15, at 398 (proposing that other GATT signatories adopt regulations similar to section 406, in the event of PRC accession).

¹⁸⁹ GATT, art. VI. The margin of dumping is defined as:

the amount by which the price of the product exported from one country to another (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country; or (b) in the absence of such domestic price, is less than either (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

¹⁹⁰ Development in the Law, *The Accession to GATT of the People's Republic of China: New Challenges for the World Trade Regime*, 23 WILLAMETTE L. REV. 843, 848 (1987).

¹⁹¹ See *supra* note 27.

¹⁹² Agreements Reached in the Tokyo Round of the Multilateral Trade Negotiations, H.R. Doc. No. 153, 96th Cong., 1st Sess., 3-337 (1979) (The seventh round of GATT discussions was concluded in Tokyo in 1979 and resulted in six agreements covering: 1) Implementation of GATT Article VII (Customs Duties); 2) Government Procurement Procedures; 3) Import Licensing Procedures; 4) Technical Barriers to Trade; 5) Interpretation and Application of GATT Articles VI, XVI, and XXIII (Subsidies and Countervailing measures); and 6) Implementation of GATT Article VI (Anti-dumping Agreement)); Hufbauer, Erb, & Starr, *supra* note 93, at 61 ("The recent Tokyo Round of Multilateral Trade Negotiations . . . continued the trend away from unconditional MFN by enshrining the conditional MFN principle in the six Codes addressed to nontariff barriers.").

GATT provisions, which apply universally to all GATT members, the codes pertain only to code signatories.¹⁹³ Should the PRC choose not to become a Code signatory, its exports would be subject to the non-tariff barriers of other GATT nations. These barriers have the potential to eliminate the benefits of GATT status.¹⁹⁴ To prevent such discrimination to Chinese products, the PRC would have to become a Code signatory and conform its own non-tariff trade constraints to GATT Code standards. This in turn would benefit U.S. industry, whose exports to the PRC have never been protected from non-tariff restrictions.¹⁹⁵

PRC GATT status would thus limit the PRC's employment of non-tariff import constraints, which are presently unregulated by existing U.S.-PRC trade agreements. This would create greater opportunities for U.S. exports to gain access to the PRC market. However, GATT membership would not preempt U.S. restriction of PRC exports through sections 406 and 201 of the 1974 Trade Act. Nor would it prohibit the application of the anti-dumping law of the Trade Agreements Act of 1979. Domestic industry would thus retain the protection these regulations afford against the unrestricted importation of Chinese products, and gain greater access to PRC markets.

3.4 Policy Considerations

The PRC's potential accession to the GATT creates extensive ramifications for U.S. foreign policy. These policy implications unequivocally further U.S. economic and political interests.

The United States' designation of China as an MFN beneficiary illustrated the extent to which trade concessions could be employed to further PRC domestic reform.¹⁹⁶ The extension of GATT membership provides even greater potential for the transformation of the PRC's internal policies. "China seems to take GATT membership as a spur to

¹⁹³ *Bilateral Trade Arrangements*, *supra* note 90, at 282 (stating that the codes, in effect, create conditional relations between GATT members since the benefits extend only to Code Signatories.); Ehrenhaft, *supra* note 25, at 147 ("Signatories to the Codes agree to be bound by the provisions of the Codes which are, for the most part, more specific rules detailing the implications of the general provisions in the GATT.").

¹⁹⁴ The restriction of imports, through non-tariff barriers, can nullify the effect of reductions in tariff duties. *See supra* notes 65-68.

¹⁹⁵ None of the treaties concerning U.S.-PRC trade have ever broached the issue of the PRC's non-tariff import restrictions. The reason for this is that, unlike tariff duties, non-tariff barriers are considered part of a nation's internal domestic policy. Many nations, specifically the PRC, consider their domestic policies to be sacrosanct. Interference in internal regulations is considered a threat to self-determination. *See generally* Hufbauer, Erb, & Starr, *supra*, note 93, at 67 ("In order to deal with nontariff distortions, each nation must accept limited international discipline over measures previously regarded as 'internal' economic policy tools.").

¹⁹⁶ *See supra* text accompanying notes 100-06.

accelerate its domestic economic reform, and the outcome of the future negotiations on its membership could have important implications on the continuity of an outward-looking strategy."¹⁹⁷ This is evidenced by the PRC's economic and political reorganization, which has sensitized the PRC to market forces and brought it in line with GATT assumptions and procedures. "The change of developmental strategy underlies a fundamental shift of economic thinking, involving a more favorable attitude towards the international division of labors, and shifting emphasis [away from] self-sufficient internal growth towards a more outward-looking approach."¹⁹⁸ GATT status thus promotes the movement of the PRC towards domestic reforms and extends its integration into the world economy. This facilitates trade between the PRC and the capitalist West, and opens the vast PRC market to U.S. goods.

In addition, PRC GATT membership would have a substantial impact on the GATT and the fundamental concept of free trade to which the treaty subscribes. The United States has benefitted extensively from both the GATT treaty and the free trade principle. In 1933, when protectionism was at its peak, U.S. exports were subject to an average tariff of fifty-four percent.¹⁹⁹ In 1984, after seven GATT rounds, the average tariff imposed on United States goods had plummeted to less than ten percent.²⁰⁰ The GATT decreased trade barriers and created a worldwide market for U.S. products.

Unfortunately, the GATT treaty is presently facing the possibility of obsolescence. The increasing deployment of "regional and bilateral trade agreements [has the potential to] ultimately render the GATT and multilateralism meaningless."²⁰¹ Arthur Dunkel, Director General of GATT, has stated that GATT members no longer appear willing to devote the effort and to make the necessary sacrifices required to maintain the progress in multilateralism sustained by GATT since its incep-

¹⁹⁷ Li, *supra* note 5, at 38. Li argues that "[i]ncreasing aggregate market access to China could be secured by facilitating the Chinese economic reform towards a more market-oriented economy; this could best be done by allowing China to resume its full Contracting Party Status." *Id.* at 33.

¹⁹⁸ *Id.*, at 29-30.

¹⁹⁹ *Textile Import Quotas, supra* note 1, at 477-78.

²⁰⁰ *Id.*

²⁰¹ *Bilateral Trade Arrangements, supra* note 90, at 303 (concluding that "[o]ne can only hope that bilateral efforts will renew commitment to multilateralism before world trade begins to resemble the patchwork of exclusionary trade-blocks that the GATT was intended to prevent"). For an analysis of the impact of multilateral and bilateral treaties concluded outside GATT parameters, and the resulting impact on the GATT, see Rubin, *supra* note 22. Dissatisfaction with the treaty has arisen not only as a result of GATT's inadequate coverage of trade restraints, but also from the widespread refusal of members to abide by GATT principles. *Id.* at 224.

tion.²⁰² Should the PRC gain GATT membership, the numerous bilateral treaties presently in force between the PRC and GATT nations would be replaced by the single multilateral GATT document. In addition, a very large and economically-powerful country would be brought within GATT regulation. Insofar as this would strengthen GATT and further multilateralism, PRC membership benefits the United States.

Finally, PRC GATT status has the potential to stabilize world relations. A politically and economically-strong and independent PRC could provide ballast between the existing superpowers.²⁰³ The PRC also provides an alternative to Soviet style communism, an alternative which illustrates the capability of communist nations to become fully integrated in the world market. To the extent that PRC GATT status increases international trade and decreases tariff and non-tariff barriers, the political and economic stability of the international community is enhanced. "Economic development and world prosperity are the best guarantees of peace; trade, one of the most important factors in raising the standard of living, responds to a political climate which promotes [a] sense of security."²⁰⁴ The PRC's membership in the GATT promotes both world political stability and international economic growth. The advancement of these inseparable factors furthers U.S. interests, and militates in favor of PRC accession.

4. CONCLUSION

The PRC's application for GATT membership has aroused considerable discussion within the U.S. foreign trade community. Much of the reaction has been negative. This Comment is intended to illustrate the favorable consequences of PRC GATT status.

The trade relations between the United States and the PRC are predominantly governed by the United States-PRC Accord. This treaty

²⁰² *GATT's Dunkel Sees Danger to World Economy in Bilateralism, Sectorism*, Int'l Trade Rep., Mar. 10, 1982, at 556.

²⁰³ *Interview: Paul D. Wolfowitz*, *supra* note 10, at 33. The threat to world peace and security posed by the Soviet Union initially instigated U.S.-PRC relations. Both nations viewed the Soviet Union with distrust. The mutual interest in Soviet containment thus facilitated increased military and economic trade. It also helped the United States and the PRC to gloss over their concerns for each other's form of government. *Id.*

²⁰⁴ Grzybowski, *supra* note 31, at 553 (arguing for increased integration of socialist economies into the GATT). See also J. JACKSON, *WORLD TRADE AND THE LAW OF GATT*, 329-32 (1969) (opining that international trade is furthered far more by universal participation in economic discussions, than by the exclusion of socialist countries.); *Generalized System of Preferences*, *supra* note 114 (positing that the current hostility much of the underdeveloped world holds for the West could be ameliorated by replacing the existing program of foreign aid with a system of trade preferences).

prompted the decentralization of the PRC's FTCs and the delegation of trade authority to autonomous profit-maximizing entities. Should the PRC gain GATT membership, this status would provide further impetus for such reforms. GATT would facilitate the integration of the PRC into the international trading system, and attune the PRC economy to market forces. To the extent that this would decrease PRC tariff and non-tariff barriers and bring Chinese trade under GATT principles, U.S. interests are furthered.

While PRC GATT membership would also qualify the PRC for GSP treatment, it would not undermine the existing unconditional MFN benefits accorded each nation. United States industry and labor would still be protected by the limitations and safeguards inherent in the GSP system. The modest gains in trade received by the PRC as a result of GSP status would not be so substantial as to injure U.S. domestic industry. These gains would, on the other hand, allow the PRC to partially ameliorate its trade deficit, and raise the foreign currency necessary for its current modernization plans. Much of this currency would be spent on U.S. exports of high-technology, and the repayment of loans from U.S. investors.

The PRC's accession would not limit the ability of the United States to regulate PRC trade through present legislative restrictions. The employment of sections 406 and 201 of the 1974 Trade Act and the anti-dumping law of the Trade Agreements Act of 1979, would not be restricted. GATT Articles XIX and VI authorize the utilization of these restrictions within the GATT framework. While PRC GATT status would preclude the imposition of an emigration requirement on China under Title IV of the 1974 Trade Act, the elimination of this requirement would not affect the United States' existing foreign policy. Title IV has never been applied to the PRC, and the negative ramifications of applying Title IV precludes its application in the foreseeable future.

The PRC's accession, therefore, would facilitate the economic and political transformation of Chinese society. It would also open the vast Chinese market to U.S. goods and services, without limiting the United States' ability to regulate PRC imports. Given the importance of continued favorable relations between the two nations, the United States should promote PRC GATT status.